Portland 15-146 Judge Davis
Reversed
Judge Swayne dissents

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~484~~ ~~252~~ 65-11

CHARLES K. MARSHALL, APPELLANT,

vs.

THE MAYOR AND COUNCIL OF THE CITY OF VICKSBURG.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED SEPTEMBER 16, 1870.

Dec. 3, 1872

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INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit A to bill of complaint	32	10
B to bill of complaint	45	15
D D to bill of complaint	50	16
C to bill of complaint	50	17
Subpœna	51	17
Bond for costs	51	17
Demurrer	52	18
Decree on demurrer	55	19
Answer of defendant	56	19
Replication	78	27
Amended bill of complaint	78	27
Order of court extending time for taking proof	80, 81	28
COMPLAINANT'S TESTIMONY.		
Deposition of M. Shannon	81	28
Exhibit A to deposition of M. Shannon	85	30
B to deposition of M. Shannon	87	31
C to deposition of M. Shannon	89	32
D to deposition of M. Shannon	92	33
E to deposition of M. Shannon	94	34
F to deposition of M. Shannon	95	35
Deposition of John K. Yerger	105	38
W. E. Thomas	108	39
E. M. Richeson	116	43
James Hazelett	121	45
Thomas Metzler	124	46

	Original.	Print.
Deposition of B. J. Butler	127	48
John Hartigan	131	49
Samuel W. Brown	136	51
W. D. Wilson	139	53
Benjamin Springer	144	55
S. H. Parisot	148	56
H. Shannon	150	57
Exhibit to deposition of H. Shannon	152	58
Deposition of M. Shannon	157	60
C. K. Marshall	164	63
Exhibit A to deposition of C. K. Marshall	194	73
A, No. 1, to deposition of C. K. Marshall	195	73
A, No. 3, to deposition of C. K. Marshall	196	74
A, No. 4, to deposition of C. K. Marshall	199	75
B to deposition of C. K. Marshall	199	75
B, No. 1, to deposition of C. K. Marshall	201	76
B, No. 2, to deposition of C. K. Marshall	210	79
B, No. 3, to deposition of C. K. Marshall	224	86
B, No. 5, to deposition of C. K. Marshall	227	87
B, No. 6, to deposition of C. K. Marshall	232	89
C, No. 1, to deposition of C. K. Marshall	241	92
C, No. 2, to deposition of C. K. Marshall	248	94
D, No. 1, to deposition of C. K. Marshall	252	96
D, No. 2, to Marshall's deposition	255	97
E, No. 1, to Marshall's deposition	256	98
E, No. 2, to Marshall's deposition	259	99
F, No. 1, to Marshall's deposition	263	100
F, No. 2, to Marshall's deposition	267	102
F, No. 3, to Marshall's deposition	269	103
G to Marshall's deposition	273	106
A. N., No. 1, to Marshall's deposition	280	108
A. N., No. 3, to Marshall's deposition	282	109
A. N., No. 4, to Marshall's deposition	284	110
A. N. N. to Marshall's deposition	285	110
A. R. to Marshall's deposition	289	112
DEFENDANTS' TESTIMONY.		
Deposition of A. Auter	291	113
N. G. Bryson	300	116
Lazarus Lindsay	315	122
W. G. Bender	330	128
A. K. Smedes	338	131
A. H. Arthur	344	133
Frank Packard and W. R. Wadsworth	375	144
J. H. Chappell and Thomas C. Richardson	379	146
M. Donovan	383	148
Final decree	399	154
Order granting appeal	400	155
Appeal bond	401	155
Certificate of clerk	403	15

1 CHARLES K. MARSHALL, COMPLAINANT, } No. 29, new series.—
vs. } In equity.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg, defendants. }

Pleas before the Honorable Robert A. Hill, district judge of the United States for the districts of Mississippi, at a special term of the circuit court of the United States, in and for the fifth circuit and southern district of Mississippi, held in the court-room of said court at Jackson, in said district and State of Mississippi, on the (10th) tenth day of March, in the year of our Lord one thousand eight hundred and seventy:

Be it remembered that heretofore, to wit, on the 10th day of October, A. D. 1867, the complainant, by his solicitors, Messrs. W. Yerger, Marshall and Miller, and Brooke and Cooke, filed his bill of complaint herein against The Mayor and Council of the City of Vicksburg, defendant, in the words and figures following, to wit:

2 To the honorable the judges of the circuit court of the United States sitting in equity at Jackson, for the southern district of Mississippi, in the 5th judicial circuit:

Charles K. Marshall, who is a citizen of the State of Louisiana, brings this, his bill, against "The Mayor and Council of the City of Vicksburg," a municipal corporation, situated within the State of Mississippi, chartered and incorporated within the State of Mississippi, and the officers of which are citizens of the State of Mississippi, defendants.

Complaining, your orator, Charles K. Marshall, respectfully shews that about the year 1831, several actions of ejectment were instituted in the circuit court of Warren County, by Nicholas Rapplege, to recover the strip of land on the Mississippi River designated on the original recorded map of the town of Vicksburg, as "commons" and "Levee street," under a claim derived from William and John W. Vick. That in 1836, the said defendants in the then corporate name of the town, "The Mayor and Aldermen of Vicksburg," the corporate name having since been, by act of the legislature of the State of Mississippi, to
3 "The Mayor and Council of the City of Vicksburg," to the July term of the superior court of chancery of the State of Mississippi, filed a bill to quiet their title to the said tract of land extending along the river, and embracing all the land between the river and the front row of lots, as laid down on said maps, from the upper to the lower boundary of the town, and praying for a perpetual injunction to prevent the said Vicks and Rapplege from proceeding further to erect permanent buildings, warehouses, and storerooms on the premises, to the common nuisance of the citizens of Vicksburg and the public. The title to the said strip of land and the easement therein, and the use thereof, was claimed in the bill to be vested in the complainants, as trustees and representatives of the rights and interests of the citizens of Vicksburg, by virtue of several acts of dedication by Newet Vick, the original proprietor of the town, in his lifetime, and by John Lane, administrator with the will annexed of his estate, since his death, and the statute of the State constituting them a body politic. That the said superior court of chancery rendered a final decree in favor of
4 complainants, in accordance with the prayer of their bill, from which an appeal was taken to the high court of errors and appeals, which, at the January term, 1837, reversed the said decree and held said

several acts of dedication to be null and void, and that complainants had no right or title whatever to said land. Your orator further represents that in 1837, soon after the said decision of the high court of errors and appeals, the said Vicks and Rapplege, and S. S. Prentiss, William S. Bodley, and others, claiming under said Vick and Rapplege, went into possession of the said tract of land, and for years held and used it as their own property, claiming and holding it adversely to the said mayor and aldermen of Vicksburg and all others. And said defendants recognized and admitted their right and title thereto; had the lots laid off on said "common" by said S. S. Prentiss and others regularly assessed, and taxes thereon collected by the assessor and collector of taxes for said city, as other private property in the city was assessed and taxes thereon collected. And they required the said S. S. Prentiss and others to make pavements and gutters in front of their lots
5 so laid off on said "common," under the same ordinance and in the same manner as other citizens were required to make pavements and gutters in front of their lots in other parts of the town. And the lots in said common were, by the officers and agents of said city, under the ordinances thereof, sold for non-payment of city taxes and to pay the cost of making pavements and constructing gutters in front thereof, just as other private property in the city was sold. And your orator further shows, that for years the said S. S. Prentiss and others charged and collected toll or wharfage of and from steamboats and other water craft landing at said common in front of said city, with the full knowledge, acquiescence and approval of the said mayor and council, and their right to do so was never disputed by the mayor and council after said decision of the high court of errors and appeals was made as aforesaid, and was admitted to be exclusive of the rights of all others. Your orator begs to refer to the opinion of the high court in said case, to be found reported in the first volume of Howard's Reports, from page 426 to 449 inclusive.

6 Your orator further states that after said common and Levee street had been lost to the city of Vicksburg, as aforesaid, the said John Lane, in behalf of his wife and the other female heirs of the said Newet Vick, filed a bill in the circuit court of the United States for the southern district of Mississippi, against the said S. S. Prentiss and others claiming title to said commons and Levee street under the will of said Newet Vick, as tenants in common with said Prentiss and others, who held under the said William and John W. Vick, and praying a partition thereof. That the said case of John Lane and wife and others against said Prentiss and others was taken to the Supreme Court of the United States, and by that court decided in favor of complainants and the female heirs held to be entitled upon the face of their bill—the case being taken up upon demurrer to the bill—to a partition of said property. That after said cause had been remanded to the circuit court aforesaid, and answers had been filed, your orator, pending the progress of the suit, from time to time purchased the interests of
7 the several litigants on both sides, until finally, in 1851, he had purchased the claims of all the parties to the whole wharf and landing in front of the town, from the original northern to the original southern boundary thereof, and almost all of the lots laid off on said common and Levee street. And your orator, by the various orders and decrees of the said circuit court, was, from time to time, put in possession of said wharf and landing and lots, until he had obtained possession in that way of the whole of said wharf and landing, except about 147½ feet lying just south of the foot of Main street, belonging to the

heirs of Hartwell Vick, deceased, which was not involved in said controversy, and nearly all of said lots, except the lot upon which the hotel known as the Prentiss House was built.

And your orator further states that during the whole period, from January, 1837, to 1851, in the summer or fall, according to his present recollection, the said mayor and council recognized and admitted said common and Levee street, including all of said wharf and landing, to be the private property of the several parties who claimed and
8 held them as aforesaid, and collected taxes thereon as aforesaid, down to and including your orator. Your orator further states that in 1851, after the said claim of the said mayor and aldermen had been finally adjudicated and settled against them as aforesaid, and after they had so long acquiesced in said decision, and admitted said property to be, and so often and in so many ways taxed and treated it as private property, and after he had in good faith, and without any knowledge or suspicion that they intended any intention or thought of ever again reviving their old claim of title thereto, and after a final decree of partition of the few lots to which he had not purchased the interests of all the litigants, on both sides, had been rendered, and nothing remained to be done except to take an account of the rents and improvements of such lots as were not then wholly owned and possessed by him, he was very greatly surprised and shocked to learn that the said mayor and council had actually filed their petition to the said circuit court of the United States, claiming an interest in said property, and praying to be made parties to said suit of John Lane et al. against S. S. Prentiss et al. and to be permitted to review and to relitigate
9 before that tribunal their old claim of title by dedication, which had been about fourteen years before that time decided by the high court of errors and appeals against them, and declared to be utterly null and void as aforesaid.

Your orator further states that in making said several purchases he was compelled to borrow large sums of money, to secure payment of part of which he executed several deeds of trust upon the lots laid off in said common, and upon the said wharf and landing, and had well-nigh exhausted his credit. But he reasonably hoped that as said suit was finally and fully settled, and all controversy and clouds removed from his title, he would have no difficulty in either selling a portion of the property and relieving himself from debt, or obtaining an extension of the debts secured as aforesaid, by deeds of trust, or borrowing money upon new deeds of trust or mortgages given on said property, and paying off and discharging the old ones. When the said defendants, however, were admitted as defendants to said suit as aforesaid, the creditors of your orator became impatient at the threatened delay
10 and protraction of the litigation, and became urgent for the payment of the money due to them, and threatened to have said property advertised and sold under said deeds of trust, if the money was not paid then without further delay. Thus harrassed and annoyed by his creditors, and feeling satisfied the property, if sold for cash under the deeds of trust, with the pending litigation and cloud thrown over the title by the unjust and unexpected course of the said defendants in reviving their old stale claim as aforesaid, would, in all probability, sell for a mere trifle and prove utterly ruinous to him, not only sacrificing his property, but leave in addition a large debt hanging over him which he would be wholly unable to pay. In this perplexing condition, with utter ruin almost staring him in the face, he felt forced against his own judgment to accept an arrangement and enter into an agreement with

said defendants, which he then and still considers a gross and unmitigated wrong, not to say actual outrage upon his rights and upon the principles of common justice. Said agreement was reduced to
11 writing, a copy whereof is now filed herewith, marked "A," and prayed to be taken as part hereof.

Your orator states that said defendant did not pay him one farthing in money, or give any other valuable consideration whatever, as he then believed and now believes, for the property embraced in said agreement. And said agreement was, in fact, based upon no consideration, either good or valuable, and was, and is, as he verily believes, utterly void in law and equity. The only pretense of a consideration was the compromise of their old claim as aforesaid, and that was not such a compromise of an uncertain and doubtful right or claim as would constitute a valuable or sufficient or good consideration in law to sustain or uphold a contract, as your orator is advised and believes. So far as defendants were concerned, their claim of right or title to said property had long been fully and finally settled against them by the court of last resort in this State, and as to them the whole matter was clearly res adjudicata.

Again, your orator, and those under whom he held and claimed,
12 had held possession of said property adversely to the said defendants and all the world claiming, using, and controlling it as their own continuously and uninterruptedly for thirteen or fourteen years after the final decision and judgment of the court in said case of The Mayor and Aldermen of Vicksburg against said Vicks and Rapplege; and before the filing of said petition by said defendants to be made parties to said suit of John Lane, et al., vs. S. S. Prentiss, et al., in said circuit court of the United States. And therefore your orator says whatever rights, if any, said defendants might ever have had to said property was completely and finally barred by the statute of limitations of this State. And moreover your orator states that said defendants, having for thirteen or fourteen years admitted said wharf and landing and other property to be the private property of your orator and others thro' or under whom he held and claimed it, and having during all that time treated it as the property of your orator and those under whom he claimed, and assessed it for taxes as their property, and received
13 and collected taxes upon it as such, and sold portions of it as such, for non-payment of taxes and other dues or liabilities to said city, were clearly estopped both at law and in equity from asserting or setting up any right or claim of title thereto. So your orator says, there was not, and could not have been, any reasonable doubt or uncertainty whatever about his right to hold said property as against said defendants at the time said agreement was made. Defendants thereby simply promised to permit complainant to receive and enjoy a limited and restricted income and use of his own property for the full period of ten years, and to absolutely refrain from interrupting or hindering him in the premises. And your orator, therefore, says the said agreement is void and not binding upon him in law or equity, and he still has a full, complete, and perfect right and title to said wharf and landing as tho' said agreement had never been made. But if in this view your orator is mistaken, and your honor should consider said agreement founded up a legal or valid consideration and binding upon him at the time it was made, he says said defendants have failed to keep and perform the' promises and undertakings thereby assured and required of them,
14 and have by their disregard and violations of the stipulations and terms of said agreement absolutely lost and forfeited all their rights under it. Your orator states that, by the terms of said agreement

or deed, said defendants undertook and bound themselves to collect and to pay over to him for the full period of ten years, to commence three months after the removal of upper wharf-boat known as the "Gov. Jones," then lying at the landing in front of Vicksburg, under the control of F. A. Rowe & Co., all the wharfages and rents derived from all the land and property thereby conveyed to them; the wharfages collected from steamboats to be according to the rates stipulated in the lease from your orator to Thomas Porterfield; which lease was to be fully respected and observed by defendants, and the wharfages collected from flatboats, rafts, barges, and other water craft, except steamboats, were to be such as might be fixed by the mayor and council of the city of Vicksburg, provided the rates should not be less than were then customary; and said defendants were to use all reasonable means, and make every effort consonant with good faith in enforcing the ordinances and provisions of the city touching the collection of wharfages
15 and rents for the benefit of your orator. Now your orator charges that, by the stipulations of said lease with Thomas Porterfield, it was agreed that your orator might demand "and collect from all regular packets landing or touching at said wharf or landing "five dollars for each trip," which will more fully appear by reference to a copy of said lease filed herewith, marked Exhibit "B," and prayed to be taken as part hereof. Yet your orator states that the said defendants, in utter contempt and disregard of their duty and obligations under said agreement, and of the rights and interests of your orator, by ordinance of said city, "ordained and published on the 7th day of February, 1852, established the wharfage of all packets terminating their trips at Vicksburg" at five dollars per week, as will more fully appear by reference to the "Charter and Laws of Vicksburg," page 129. There was then and had been for some time prior thereto, and has been ever since, except when suspended during the war, always one regular packet between Yazoo City and Vicksburg, making three trips each week. And a portion of the time, since the execution of said agreement, there were several packets running between said places, each making three
16 trips per week. Your orator states that he several times called the attention of said defendants to the discrepancy between the rates of wharfage to be charged packets, as provided for in said ordinance and the said lease with Thomas Porterfield; he pointed out to them the fact that he was only allowed to collect or receive five dollars per week from packets which, under said lease, should have paid him fifteen dollars per week, and from which they were bound in good faith to collect and pay over to him at least fifteen dollars per week. He shewed them that said ordinance, if permitted to stand and be enforced, would impose on him a loss of not less than $520 per year, exclusive of interest, or $5,200, besides interest during the ten years he *he* was entitled to receive from said wharf and landing. And your orator charges that, notwithstanding the serious and gross injustice done him by said ordinance and its plain and palpable violation of the letter and spirit of said agreement, said defendants wholly neglected and refused to rescind or repeal said ordinance, and it was continued in force as the law during the whole time he was permitted to receive the income from said landing, and he was never allowed to charge or collect
17 of or from said packets more than five dollars per week. Whereby your orator charges he sustained a loss during his term of not less than seven or eight thousand dollars, including interest. And your orator charges that, by said ordinance, and through the instrumentality, agency, and aid of the said mayor and council, his right to

collect wharfage of said packets was interrupted and permanently defeated to the extent of the said ten dollars, at least, per week. And your orator further states that the said mayor and council, by another ordinance ordained and published on the 7th day of June, 1852, empowered and required the wharf and harbor master, or other agent appointed by them, to charge and collect of and from the captain, owner, supercargo, or agent of flat-boats, keel-boats, barges, and other water craft, a fee of one dollar each for the privilege of landing at Vicksburg, for the use and benefit of the city. See the charter and laws of Vicksburg, page 90, section 2. Your orator states that this ordinance, as well as the ordinance above referred to, was passed without his consent. That as soon as he received notice of its
18 passage he protested against it, and insisted on his right under said agreement to have and receive the entire rents, income, and wharfage in any manner arising out of or derived from said wharf and landing during the said ten years, and he demanded that the said landing fee of one dollar should be paid over to him. And the said mayor and council, in like disregard of his rights and their duty under said agreement, peremptorily refused to pay or permit him to receive one cent thereof. Your orator files herewith a copy of a receipt given by J. H. Moore, harbor-master of said city, dated July 1st, 1859, marked Exhibit D D, as a sample of the receipts issued by said city, under said last-mentioned ordinance. Your orator charges that under this ordinance a large sum of money amounting to several thousand dollars, tho' he has no means of knowing and cannot state the precise amount, was collected and paid into the city treasury, every cent of which he was legally and justly entitled to under his said agreement with said city: and that they have thus wrongfully, and against his wish, taken
19 and appropriated money which ought to have been paid, and it was their duty to have paid, to him, amounting in the aggregate, including interest, to not less than four or five thousand dollars, as he believes. And your orator further states that since the execution of said agreement, to wit, in 1853, 1854, 1855, and 1858, quarantine regulations were established by said mayor and council, and boats thereby, thro' the agency of said city, prohibited from landing at said wharf and landing, whereby the said wharfages and income were almost entirely taken away from him during the continuance of said quarantines. Not being permitted to land at the city landing, or the usual and ordinary landing in front of the city, many boats would pass without even touching at the quarantine grounds, which was some two miles or more below the usual city landings, at all: and most of those that did land there positively refused, and did not pay, wharfage, insisting they were not bound to do so, as the land there did not belong to your orator, and was not within the city limits. These several quarantines amounted in the aggregate to about nine or ten months' time, during which his income and
20 receipts from said wharf and landing were substantially cut off by the agency and action of the said mayor and council; and he is advised and believes, and so charges, that these nine or ten months should in equity, and by the fair and reasonable construction of said agreement, to deducted from, and not computed as part of, the ten years he was to be allowed to receive and enjoy the income of said property. Your orator did not object to the establishment of said quarantines. They were adopted as a sanitary measure for the protection of the citizens of Vicksburg and the public from yellow fever. And your orator could not as a good citizen and a conscientious man oppose any objection to so benevolent and humane an effort. But he never for one moment

thought or imagined that he would be asked or expected to lose the time of such quarantines, or that the period of their continuance would not be willingly and cheerfully deducted by said mayor and council from his ten years. No notice or suggestion that he would be required to bear such a loss was given or intimated to him by said mayor and
21 council, or by any person at that time, or any time before or during the continuance of either of said quarantines. Your orator further states that about the 14th day of April, 1861, a civil war commenced between the Confederate States, of which the State of Mississippi comprised a part, and the United States, and very soon thereafter all business and intercourse between the citizens and people of Mississippi and those of the United States was forbidden and ceased. From some time in the month of April, 1861, no boats were permitted to descend the Mississippi River below Cairo from any points above that place on the Mississippi or Ohio Rivers, or the tributaries of either. The river was closely blockaded until Vicksburg and all other points along the river fell into the power and custody of the United States Army and Navy. Thus by the operation and effect of the war, nine-tenths of all the boats previously navigating the Mississippi River were prevented from descending the river as low as Vicksburg, after April, 1861, until the capture of the place by the combined land and naval forces of the United States in July, 1863, and about nine-tenths of the whole revenue or income of said landing and wharf were
22 immediately cut off by the breaking out of the war and blockading the river aforesaid. Your orator was permitted for a short time to collect wharfage from the few boats which were left within the confederate lines, and came to the landing at Vicksburg after April, 1861. But very soon the steamboats generally within the confederate lines, after the commencement of the war, were impressed or chartered by that government, or engaged some way in its employ, and refused to pay the wharfage, and said defendants did not attempt to make them pay; and your orator had no power to do so. Your orator, therefore, says that his income from said wharf and landing was substantially cut off and stopped, from about the latter part of April, 1861, and he has never been permitted to receive or enjoy it since. He admits that he has been informed, and believes, that some parties who acted in his name, and professedly as his agents, continued to collect wharfage occasionally from such boats as chose to pay during the residue of the year 1861, and thro' a part of 1862. But such collections were very small, and a large proportion of them from the landing of your orator
23 lying south of the original boundary of Vicksburg, and not embraced in his said agreement with the city, and many of them without the knowledge of your orator, and were never paid to him, and no account of them given to him, nor was any notice given to him of their collection; and it was not until since the war that he heard, and then only thro' others than those who had been professedly acting in his name, of said nominal collections being continued for such a period.

Your orator further states, about the fifth day of May, 1861, he left Vicksburg and went to Virginia, and that he returned to Vicksburg only occasionally during the continuance of the war, and that he believes six weeks would cover the time spent by him in Vicksburg, from the time he left in May, 1861, until the surrender in 1865. That during his absence, in the month of February or March, 1862, as he has since been informed and believes, the said mayor and council elected or appointed —— Watts as wharf and harbor master, and took possession of, and have continued to claim and hold, all of the said wharf and

24 landing ever since, except during the time they were under federal control. That when he returned home to Vicksburg, in 1865, he found the said mayor and council in possession of said wharf and landing, and receiving a large revenue or income therefrom. And they have continued to receive therefrom at the rate of thirty-five to forty thousand dollars per year ever since. All of which in equity, and under a just and fair construction of his said agreement with the city, belonged to and should have been paid to him.

Your orator states that the upper wharf-boat, called the "Gov. Jones," referred to in his said agreement with said city, was removed on or about the 30th day of January, 1852, as will be seen by a copy of a bill of sale thereof, filed herewith, "C," and consequently his term of ten years did not commence running until the first day of May, 1852, three months after the date of such removal. And by the terms of said contract or agreement he was entitled to have and receive ten full years of uninterrupted income and revenue from said property. And for whatever period the receipts or income from said property might or should be suspended or interrupted by the intervention, or thro'
25 the acts or agency of parties, other than the said mayor and council, without any fault of theirs or any assistance from them, was to be added to his term, until he should have actually received the full income and revenue for the entire period of ten years in all. So your orator states that his term of ten years would have been complete and ended on the 1st day of May, 1862, had there been no interruption or suspension of his receipts and income. But he says he is advised and believes, and so charges, that, according to the spirit, true intent, and meaning of his said contract or agreement with said city, and under any just, fair, and equitable construction thereof, he was entitled to have the period of the several quarantines as aforesaid, and of the interruption or suspension caused by the civil war as aforesaid, to wit, about ten months for the former, and one year from May 1st, 1861, till May 1st, 1862, for the latter, added to his said term of ten years. And he therefore states that when the said mayor and council of the city of Vicksburg took possession of said wharf and landing as aforesaid, on or about the first day of February, 1862, during his absence as afore-said, his said term had at least twenty-two to twenty-four months
26 to run.

Your orator further states that since his return home in 1865, as aforesaid, he has repeatedly applied to said mayor and council for the possession of said wharf and landing, and insisted on his right to the same, until his full term of ten years should be completed and ended as aforesaid. And he has tried to get them to pay over to him the amount received by them as wharfage, rents, and income thereof, as aforesaid, and he has urged them in various ways to compromise or set-tle with him in some reasonable and equitable way for his unexpired term. He has offered to sell out to them, and has been willing and anxious to settle with them upon almost any terms even approximating justice and fairness. But he regrets to be compelled to say that all his demands and treaties, and offers for possession, payment, compromise, or settlement, have been positively, and sometimes almost indignantly and insultingly, refused. And he now has no other alternative left but an appeal to the courts of the country or an absolute and unconditional surrender of his large and valuable rights as aforesaid.

Your orator further states that the said mayor and council, in-
27 stead of in good faith aiding and assisting him in the collection of said wharfages and revenues, and protecting him as far as they

were able in the enjoyment of said property, have in various ways shown, almost from the very date of said contract or agreement, their utter disregard of its provisions and of his rights and their duty under it. They have at various times and in divers ways countenanced, and incidentally, if not positively and openly, aided and encouraged others in resisting the payment of wharfage and tolls or rents to your orator for the use of said property; they have aided in attempts to defeat his rights to the income and benefit of the ferry at Vicksburg; they have harrassed and annoyed his tenants by expensive suits, and in one case, without any just or reasonable cause, as was shown by the discharge of the defendant, dissolution of their injunction and dismissal of their bill; they filed their bill against B. J. Butler, a tenant of your orator, occupying a portion of said landing, and enjoined him from the prosecution of his legitimate business, and him personally attached for contempt, and arrested and taken to Greenville, in Washington County, before his
28 honor Judge J. S. Yerger, thereby subjecting him to great mortification, inconvenience, and expense; they have transferred or conveyed away to the Vicksburg, Shreveport and Texas Railroad Company, without the consent of your orator, or even consulting him, a valuable portion of said landing between Grove and Second East or Main streets; they have in direct violation of the letter and spirit of said contract or agreement, and without obtaining the consent or approval of the voters or citizens of Vicksburg, as therein provided, or even consulting them or your orator in any way, leased out portions of said landing for the use of wharf-boats, intended and used for steamboats, not between China and Clay streets, and outside the limits and boundary therein designated and prescribed as the "steamboat landing," and two wharf-boats are now, and have been for the last eighteen months, at least, lying south of China street with the permission of, and under contract with, the said mayor and council, and they are now the principal steamboat landings at said city, thus defeating a very important and valuable portion of said contract or agreement, viz: stability and permanency in the value of property in that portion of
29 the city, and rendering it impracticable for those making investments and improvements to know their relative position to the steamboat landing; and they have finally taken possession of, and substantially and effectually, and without the aid of this court in the premises shall be rendered him, finally ejected him from all of said wharf and landing.

Your orator, therefore, says the said mayor and council have, by their own deliberate acts, not only enlarged and changed the said steamboat landing without any authority or right whatever to do so, but they have wilfully, and wrongfully or unjustly, interrupted his right to collect wharfage or rents from said property: and if your honor does not grant him relief, they have permanently defeated his right so to do.

Your orator consequently says he is advised and believes the said mayor and council of the city of Vicksburg, by their said several acts and proceedings in the premises, have, according to the letter, spirit, and true and just intent and meaning of said contract and agreement, forfeited whatever right or title they had to said property, or any
30 part thereof, and the same or every part of it is now, by the very terms of said contract, revested in him, and he is as fully and absolutely entitled to it as if said contract had never been executed. Your orator further states that said defendants are expending and wasting the rents, wharfages, and incomes arising out of or received from said property, as fast, or nearly as fast, as they receive it; and that they

own no other property out of which it would be practicable for them to remunerate him, or pay what he is legally or equitably entitled to have and recover of them for the use and income or rent of said property, or against which it would be possible to enforce and make productive any decree he may recover against them. And unless a receiver shall be appointed to take charge of said property, and empowered to collect and hold the rents, wharfages, and incomes received or arising therefrom, he will be wholly without adequate remedy in the premises. In tender consideration whereof, &c., your orator prays that the said mayor and council of the city of Vicksburg may be made defendants to this bill, and compelled to answer all and singular the allegations, statements, and charges herein contained, as fully as if again repeated
31 and put by way of special interrogatory; that an account may be taken and stated of the amount due your orator by said defendants for the use of said property by them, or the rents, issues, and income thereof received by them; that they be compelled to discover and show the whole amount received by them, of or for or on account of said property, and that upon final hearing your honor will decree that the said contract or agreement may be rescinded, vacated, or annulled, and that said property be delivered up and restored to him, and that said defendants be decreed to pay him the amounts that may be ascertained or found to be due him upon the taking of said account. And in the meantime your orator prays that said defendants may be enjoined and restrained from collecting any farther wharfages, rents, tolls, or charges of or from or for or on account of said property, and from attempting to hold or control said property, or meddling with it in any way. And he prays that some suitable person may be appointed as receiver to take possession of and hold said property, and collect the wharfages and rents therefor until a final decree shall be rendered
32 herein. Or, if mistaken in his rights in the premises as above stated and set forth, your orator prays for such other further and general relief as to your honor may seem just and equitable, and his case requires. He prays for the issuance of writs of injunction, subpœna, &c., directed, &c., and as in duty bound he will ever pray, &c.

W. YERGER,
MARSHALL AND MILLER,
BROOKE AND COOK,
Sol's for Complainant.

Filed with Ex. B C, and D D, and s'p'a iss'd to Nov. T., 1867, this 10th October, 1867.

G. T. SWANN, *Clk.*

Exhibit "A," referred to in the foregoing bill of complaint, is in the words and figures following, to wit:

This indenture, made and entered into this 21st day of November, in the year of our Lord one thousand eight hundred and fifty-one, by and between Charles K. Marshall and Amanda M. Marshall, his wife, of the city of Vicksburg and State of Mississippi, of the first part, and The Mayor and Council of the City of Vicksburg of the second part, witnesseth that the said parties of the first part, for and in consider-
33 ation of the sum of five dollars, and upon the terms and conditions hereinafter mentioned, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, the following described land and property, to wit: Beginning at the point where the east line of Washington street, as

known and designated on the map of said city, made out by A. M. Winn, intersects the original northern boundary of Vicksburg, and running thence south, along the east line of said street, to the northwest corner of square 16; thence west, along the south line of Jackson street, to the east line of Levee street, at the northwest corner of square 57; thence south, along the east line of Levee street, to the northwest corner of square 58; thence west to the east point or angle of square 65; thence south, along the east line of Levee street, to the northwest corner of square 63; thence west to the northwest corner of square I, at the intersection of Clay and Common streets; thence south, along the east line of Common street, to the northwest corner of square L; thence west to the northwest corner of square M; thence along the east line of Front Levee street to the original southern boundary of Vicksburg; thence west, with the said original southern boundary line, to the
34 Mississippi River at low-water mark; thence north, with the meanders of said river, to the original northern boundary of Vicksburg; and thence, along said boundary line, to the place of beginning. And also all that land and other property conveyed by John Bobb, jr., and others, to the said Charles K. Marshall, by deed bearing date the twenty-sixth day of March, 1851, and duly acknowledged and recorded in the office of the clerk of the probate court of Warren County, Mississippi, in book X, page 160, to which deed reference is hereby made for a full and complete description of the same; and also all that portion of the landing known on the map made out by A. M. Winn as the "Winn Landing," lying immediately north of the original northern boundary of Vicksburg, and fronting on the river about three hundred feet; and also the said Charles K. Marshall's unexpired term in the lease of the Union landing, lying immediately south of the original southern boundary of Vicksburg. It is expressly understood and agreed that the lease executed by the said Charles K. Marshall to Tho's Porterfield on the twenty-sixth day of March, 1851, shall be respected in all its provisions by all parties, the said Mayor and Council of the City of Vicksburg to take
35 the place of said Marshall therein, and have all his rights and privileges under the same, and the steamboat landing shall, for the term of said lease, be kept within the limits therein stipulated for it; nor shall it be changed or removed from its present location between China and Clay streets after the expiration of said lease, unless two-thirds of the legal voters of said city, present and voting in reference thereto, after ten days' public notice being given of the time and place of taking the vote, shall order or approve of the proposed change or removal. And it is understood that The Mayor and Council of the City of Vicksburg take all the property above conveyed, subject to the several deeds of trust and mortgages heretofore given thereon by the said parties of the first part, to wit: Rufus King, William Lum, Abram B. Reading; and the said deeds of trust and mortgages are to be discharged in the manner hereinafter mentioned.

To have and to hold the land and premises hereby conveyed, together with all and singular the privileges, rights, and appurtenances of every nature and kind whatever to the same, belonging or in anywise appertaining to the said party of the second part and their successors forever.

And the said parties of the first part covenant and agree to
36 and with the said parties of the second part, that they will forever warrant and defend the title to the wharf and landing between the original northern and the original southern boundary of Vicksburg as laid off by S. S. Prentiss and others, except one hundred and forty-seven feet and six inches claimed by Cæsar Fraisse, being

the north half of the square between Jackson and Second East streets, known as the "City Landing," against the claim or claims of all persons whatsoever, and that they will forever warrant and defend the title to all the land and property first above described, not included in the above warranty against the claims of themselves and the female heirs of Newett Vick, deceased, but against the claims of no other person whatever; and that they will warrant the title to all the residue of the land and property above conveyed, against themselves, their heirs, and those claiming under them, and against none others; it being distinctly understood that they do not pretend to own or claim Washington or Jackson streets east of the commons, nor all the lots in the square lying between Jackson and First East streets. It is also understood that if there are any lots or parts of lots, to perfect the title of which it may be necessary to carry out the decree of the United States
37 circuit court in the case of John Lane et al. vs. S. S. Prentiss et al., the said parties of the second part shall await the fulfilment of the provisions of said decree; and should any of the lots or land in said city now owned by the said parties of the first part ever bind or front on the said river, the exclusive right to demand and collect toll or wharfage from or of all steamboats and other water crafts for landing or lying on or opposite to such lots or land is hereby sold, transferred and conveyed to the said parties of the second part and their successors forever. The said parties of the second part, for and in consideration of the premises, hereby sell, convey, and forever quit-claim to the said Charles K. Marshall and his heirs all the right, title and interest of the said Mayor and Council of the City of Vicksburg of, in and to all that portion of the city of Vicksburg lying and being east of the lots and land first above described, and west of Levee street, between Jackson and South streets, except the various streets as laid down on the present map or plat of said city made by A. M. Winn. And the said mayor and council of the city of Vicksburg hereby agree to collect and pay over to the said Charles K. Marshall, his
38 legal representatives or assigns, all the wharfages and rents derived from all the land and property above conveyed by said parties of the first part, from the present time and for the full period of ten years, to commence three months after the removal of the upper wharf-boat, known as the "Gov. Jones," under the control of Messrs. F. A. Rowe & Co.; the wharfages collected from steamboats shall be according to the rates stipulated in the said lease to Thomas Porterfield, except in the case of boats which may refuse to pay wharfage as therein specified, and from them wharfage shall be collected as provided for in the ordinance hereinafter referred to: the wharfage collected from flat-boats, rafts, barges, and other water craft, except steamboats, to be such as may be fixed by The Mayor and Council of the City of Vicksburg; provided the charges are not less than are at present customary, and provided also that this clause shall not be so construed as to prevent the said mayor and council from levying such tax or taxes on the sale of goods, wares, and merchandise, &c., as they may deem expedient, and the rent of buildings, coal, wood, and shingle yards, ferry landings, &c., to be such as the said Charles K. Marshall, his representatives or assigns, may contract for with the parties
39 to whom he may rent or lease the same; and he is hereby fully authorized and empowered to make and execute all such contracts and leases as he may deem proper for that purpose. All the wharfages and rents shall be collected by a collector or collectors, who shall be nominated by said Charles K. Marshall, his representatives or

assigns, and appointed and confirmed by the said mayor and council; but said mayor and council shall not be liable for any default of any collector. The collecter or collectors shall settle with said Marshall, his representatives or assigns, weekly, and pay over to him or them all the wharfages collected from steamboats, flat-boats, and other water craft, for that week, and shall furnish him or them a semi-monthly statement of all sums received, and the names of the steamboats and the number of the other water craft received from. The salary or compensation of the collector or collectors shall be paid by the said Charles K. Marshall, his representatives or assigns, and shall be such as they may contract for. The said Marshall shall have the of the office in, and the right to board his collector on Porterfield's wharf-boats, as stipulated in the lease to said Porterfield, free of any charge therefor. The said mayor and council shall pass an ordinance, which shall not be
40 repealed during the ten years the wharfages and rents are to be paid to said Marshall as aforesaid, making all boats that may refuse or neglect to pay the established rate of wharfage liable for ten dollars for each landing until they settle and pay all arrearages; provided the said Marshall procures the consent in writing of said Porterfield to the passage of such an ordinance. And the said mayor and council shall use all reasonable means and make every effort consonant with good faith in enforcing the ordinances and provisions of the city touching the collection of wharfage and rents, and all suits or other proceedings for the collection of either wharfage or rents shall be in the corporate name of said city, for the use and benefit of said Charles K. Marshall, and they may be instituted and carried on whenever said Marshall, his representatives or assigns, may think such proceedings necessary to enforce collections; and all the fees, costs, and charges that may be incurred in prosecuting or conducting such suits and proceedings shall be paid by the said Marshall, his representatives or assigns. It is expressly agreed by the parties hereto that if the right to collect wharfage be suspended for any period by the intervention of third
41 parties, the time of such suspension shall be added on to the said term of ten years, it being the intention of these parties that the said Marshall, his representatives and assigns, shall actually receive the rents and wharfages accruing in ten years altogether, and no more. And in case the right to collect wharfage or rents be interrupted or defeated permanently, through the instrumentality or agency, or with the aid of said mayor and council of the City of Vicksburg, all the property above conveyed by said Marshall and wife shall immediately revert to him, his heirs or assigns, and be as fully and absolutely his as if this deed had never been executed. It is also further understood and agreed that the said Charles K. Marshall shall, out of the proceeds of said property, after the first day of July, 1852, pay quarterly, for the period of five years, the said years being years of collection, to the creditors whose claims are secured by deeds of trust or mortgages on said property conveyed by him, the sum of eleven hundred dollars, to be divided amongst them in proportion to their respective claims, and furnish to the mayor of said city satisfactory vouchers that the same has been done; and if he, or his assigns, executors, or administrators, fail
42 or neglect to pay to said creditors the said quarterly instalments as they respectively become due, it shall be the right of the said mayor and council to collect the wharfage from steamboats from and after the date of such failure and neglect, and pay over the same to said creditors in the proportion and manner the said Marshall was bound to do. And in the event of said mayor and council failing to pay over to

said creditors the wharfage so collected by them, in the proportion and manner above mentioned, when requested to do so, the said creditors, or either of them, may immediately proceed to enforce the payment of the sum so withheld by a foreclosure of their mortgages or execution of their deeds of trust upon any of the property above conveyed to said city; provided that the said Marshall procure the consent in writing of said creditors to the terms of this deed, and provided further that nothing contained in this deed shall be so construed as to prevent either of said creditors from proceeding to foreclose their mortgages or execute their deeds of trust according to the terms thereof upon or against any other property not embraced in the above conveyance to said city. And
43 if said creditors are not wholly paid off at the end of five years, the said years being years of collections, from the first day of July, 1852, then the whole income from said property shall be retained by the mayor and council and appropriated to the payment of said creditors, until the debts due them respectively shall be discharged. The said mayor and council are to place the steamboat-landing, as designated in Porterfield's lease, in good repair and condition. It is understood that the obligation of Porterfield to keep the steamboat landing in repair, as stipulated in his lease, does not embrace the making of any stone, brick, or wooden gutter or pavement; and that said Marshall is not to pay any other expense or charge than as hereinabove mentioned on the property herein conveyed. The said mayor and council are to withdraw their application to be made defendants to the said suit now pending in the United States circuit court, and to allow the decree therein to stand as made. It is agreed that neither the said Marshall, nor his lessees or assigns, shall erect any permanent building or machine on any of the property hereby conveyed to the city; but should any houses now on said property burn down, or be destroyed in any manner, the Marshall, his lessees and assigns, shall have the privilege of rebuilding the same. And that said Marshall shall be allowed
44 six months after the expiration of the said term of ten years to remove any buildings or improvements he may then have on said property.

In testimony whereof the said Charles K. Marshall and Amanda M. Marshall, his wife, have hereunto set their hands and seals, and Nathan G. Bryson, mayor of the city of Vicksburg, for and in behalf of the mayor and council of said city, hath hereunto subscribed his
[L. S.] name and affixed the seal of said city, on the day and year first hereinbefore written.

C. K. MARSHALL. [SEAL.]
A. M. MARSHALL. [SEAL.]
A. G. BRYSON, *Mayor.* [SEAL.]

THE STATE OF MISSISSIPPI, *Warren County, ss:*

Personally appeared before me, Henry F. Cook, judge of probate for said county, the within named, Charles K. Marshall, who acknowledged that he signed, sealed, and delivered the foregoing deed, as his own act and deed, on the day and year therein written; and Amanda M. Marshall, wife of the said Charles K. Marshall, on a private examination separate and apart from her husband, acknowledged that she signed, sealed, and delivered the foregoing deed, on the day and year
45 therein written, as her voluntary act and deed, freely and without any fear, threat, or compulsion of her said husband.

Also, personally appeared, N. G. Bryson, mayor of the city of Vicksburg, who acknowledged that he signed his name as mayor of said city,

and affixed the seal of said city, to the foregoing deed, and delivered the same as the act and deed of The Mayor and Council of the City of Vicksburg, on the day and year therein written, and for the purposes therein expressed.

Given under my hand and seal this the 12th day of January, A. D. 1852.

HENRY F. COOK. [SEAL.]

I, Edward B. Scarbrough, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 30th day of January, 1852, whereupon I have made the same of record in book X, pages 480, 481, and 482.

Given under my hand and seal of office this 14th day of February, A. D. 1852.

[L. S.] E. B. SCARBOROUGH, *Clerk.*

Exhibit "B" to bill of complaint.—Copy.

Articles of agreement made and entered into this 26th day of
46 March, A. D. 1851, by and between Charles K. Marshall, of the city Vicksburg, and State of Mississippi, of the one part, and Thomas Porterfield, of the same city and State, of the other part, witnesseth that the said Marshall has leased and rented, and does hereby lease and rent unto said Porterfield, for the full period of ten years, commencing from this date, and for the purpose hereinafter mentioned, the following described property, to wit: All the wharf and landing on the Mississippi River between the northern boundary of the city of Vicksburg and the original southern boundary thereof; and also all that portion of the wharf and landing on said river lying and being south of the original southern boundary of Vicksburg, this day conveyed and transferred by John Bobb, jr., and wife, and William Porterfield, to him, for the use of steamers of all kinds, except ferry-boats, and for transacting therein a general wharf-boat business. The wharf-boat to lie between the north side of China and the south side of Clay streets, and no other boat of any description, except such as may be necessary for carrying on the wharf-boat business, shall be permitted to lie between the north and south sides of China and Clay streets as aforesaid, said Marshall reserving, however, the exclusive use and control of all of said
47 wharf and landing (except that portion lying between the north side of China street and the south side of Clay street) for the landing and use of ferry-boats, and all other water craft steamers navigating the said river. Said Marshall, to that portion of the landing and wharf conveyed and transferred to him by John Bobb, jr., and wife, and William Porterfield, as above mentioned, warrants only such right and title as they have warranted to him, and such as he has acquired or may hereafter acquire from William Vick, or by any purchase under execution against him, said Vick. Said Marshall agreed to have the houses west of Levee street, between Clay and China streets, removed, and the wharf and landing between said streets put in suitable and proper repair for a steamboat landing without any unreasonable delay, and as early as he can. Said Marshall also agrees to proceed, as soon as practicable, to have the upper wharf-boat, now under the control of Fraisse and Rowe, removed from said landing, and to allow no other wharf-boat than said Porterfield's to lie within the boundaries first above mentioned. It is distinctly understood, however, that said Mar-
48 shall does not convey to said Porterfield any right to demand or

collect from any steamboat or other water craft any toll or wharfage for landing at his, Porterfield's, wharf-boat, or any part of the wharf and landing first above described. He, said Marshall, hereby expressly reserves the exclusive right to demand and collect toll and wharfages as hereinafter mentioned. And the said Porterfield, for and in consideration of the premises, hereby promises and agrees to place the lower wharf-boat, called the "Magnolia," forthwith between the north side of China and the south side of Clay streets, and keep her, or some other good and substantial wharf-boat, within said limits during the continuance of this lease, and to keep the landing within said limits in good repair at his own expense after it shall have been once put in repair by said Marshall. Said Porterfield also agrees to furnish a suitable and convenient office on the said "Magnolia," or such other wharf-boat as he may have within said limits, for the use of and occupation of the agent or collector of said Marshall, and board such agent or col-
49 lector during the continuance of this lease, without any cost or charge to said Marshall therefor. It is also agreed that said Marshall may by himself, or through his agent and collector, demand and collect of and from all regular packets touching at said wharf-boat or wharf and landing, a toll or wharfage of not exceeding five dollars for each trip, and may demand and collect of and from all other steamboats a toll or wharfage of three dollars, or less, for each landing, and the said Porterfield shall not, either directly or indirectly, obstruct or prevent, or endeavor to prevent, the collection of such toll or wharfage by said Marshall or his agent; provided, that no toll or wharfage whatever shall be collected by said Marshall, or his agent, until the said upper wharf-boat, under the control of Fraisse and Rowe, as aforesaid, shall first be removed beyond the limits of the wharf and landing hereby leased to the said Porterfield, as above mentioned. And it is further agreed, that if said Porterfield shall be lawfully evicted from the possession of said wharf and landing between the north side of China and the south side of Clay streets, before the expiration of this lease, by William Lum, or any other person, this lease shall, from and after
50 such eviction, cease and be utterly null; and the said Porterfield may, in such case, immediately resume and be fully vested with all the rights and privileges which said John Bobb, jr., and wife, and William Porterfield, convey and warrant to said Marshall, as aforesaid, and each party restored to such rights as he would have possessed had this contract or lease never been executed.

In testimony whereof the said Charles K. Marshall and Thomas Porterfield have hereunto set their hands and affixed their seals, this day and year first above written.

C. K. MARSHALL. [SEAL.]

THOMAS his + mark. PORTERFIELD. [SEAL.]

Filed with O. B., 10th Octo., '67.

G. T. SWANN, *Clk.*

Exhibit D D, referred to in said bill of complaint, is as follows, to wit:

Copy.

Received of Mr. Ward, one dollar, city landing fee.
Vicksburg, July 1st, 1869.

J. H. MOORE,
Harbor-master.

50½ Exhibit "C," referred to in the foregoing bill of complaint, is as follows, to wit:

Exhibit "C."—Copy.

For and in consideration of the sum of fifteen hundred dollars, to us in hand paid, the receipt whereof is hereby acknowledged, we have sold, and hereby transfer and sell, &c., to C. K. Marshall, the wharf-boat called the "Gov. Jones," recently used at the upper landing in this city, with all the necessary fixtures thereto belonging, free from all claim or claims by us; and we also transfer any interest we may have in the mail agency, in accordance with the approbation of the postmaster, John Bodley, of this city, until our resignation of said office shall take effect.

In testimony whereof we have hereunto set our hand and seal this the 29th of Jan., 1852.

F. A. ROWE & CO. [SEAL.]

Witness: W'M E. THOMAS.

For value received, I hereby sell and transfer to Tho's Porterfield the within mentioned wharf-boat, Gov. Jones, and the interest in the mail contract, free from all claims of, by, through, or under me.

Given under my hand this the 30th day of June, 1852.

CHA'S K. MARSHALL.

Witness: W'M E. THOMAS.

Endorsed: N. S. 29. In ch'y. Exhibit "C."

Filed with O. B. 10th Oct'r, 1867.

G. T. SWANN, *Clk.*

51 A subpœna was duly issued in this cause on the 10th day of October, 1867, and was returned "executed," on the 12th of October, 1867, but the same has been lost or mislaid, and does not appear on file with the papers in this cause.

On the 11th of October, 1867, the following bond for costs was filed in this cause, to wit:

In the circuit court United States, 5th circuit for said district.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

C. K. MARSHALL, PLAINTIFF,
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSBURG, defendant. } No. .—October the tenth, 1867.

We are hereby bound as security for the plaintiff in the above entitled cause, for the costs which are now or may at any time hence be due to the officers of court.

Given under our hands and seals this 10th day of October, 1867.

W. AND J. R. YERGER. [SEAL.]
THO. GREEN, *Surety.* [SEAL.]

Costs said to be not over $250, and for which I sign.

THO. GREEN.

UNITED STATES OF AMERICA,
52 *Southern District of Mississippi, sc:*

Before me, George A. Smythe, a commissioner of the United States for said district, this day came and Thomas Green, obligors, whose names are above written, and acknowledged that they signed, sealed, and delivered the same as their act and deed; and the said and Thomas Green, being first duly sworn, say that they are each, severally, worth the sum of two hundred dollars in real or personal estate within said district, not subject to any recorded lien, nor exempt from execution or distress.

Acknowledged and sworn to, or subscribed, before me this 10th day of October, A. D. 1867.

GEO. A. SMYTHE,
U. S. Com'r for Southern Dist. of Miss.

Filed 11th October, 1867.

GEO. T. SWANN, *Clk.*

And on the 8th day of November, A. D. 1867, the following demurrer was filed by the defendant to the complainant's bill of complaint herein, to wit:

53 In the circuit court of the United States for said district, November term, 1867.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg. } No. 29, N. S.—Bill of complaint.

The defendants served with process herein, not confessing the truth of any matters alleged in the complainant's bill, say that the same are not sufficient in law to require them to answer thereto; therefore, they demur to the same, and for cause of demurrer say:

1st. As to so much of said bill as charges that the conveyance made by the complainant as set forth in said bill was void for want of consideration, and also that part of said bill which alleges that the title of defendants under said bill has become forfeited, and as to the relief prayed on that ground there is no equity or ground for equitable relief disclosed in the said bill, in this:

2d. The bill seeks to vacate a deed, without charging that the same was obtained by fraud or deception of any kind; and said deed and the allegations of the bill show a sufficient valid consideration.

3d. Said bill asks that a forfeiture of title under said deed shall
54 be enforced, when no forfeiture has accrued under the terms thereof; or, if such forfeiture has accrued, does not show that complainant has established said forfeiture by suit at law.

4th. The remedy for any breach of the conditions or covenants in said deed entitling complainant to enter for condition broken, or for forfeiture, is at law.

5th. There is no sufficient cause of forfeiture or for vacating said deed set forth, and if so it has been waived.

6th. As to so much and such parts of said bill sets up a title to pecuniary satisfaction for any breach of the covenants in said conveyance, the complainant cannot seek the aid of a court or equity for pecuniary

compensation until he has first established his claim and exhausted his remedy at law; and there is no averments nor any prayer for such relief, and no sufficient allegation of any breach of covenant.

7th. Complainant has waived his right to compensation by delay and acquiescence.

D. W. HURST and
W. P. HARRIS,
Sol'rs for Defendants.

55 The certificate of counsel as to the grounds of demurrer and the affidavit of defendant required by the rules of court to the above demurrer is hereby waived.

W. AND J. R. YERGER and
T. A. MARSHALL,
For Complainant.

Filed Nov. 8th, 1867.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 26th day of November, A. D. 1867, the same being a day of the November term of said circuit court of the United States for the 5th circuit and southern district of Mississippi, begun and held at Jackson, on the first Monday of November, A. D. 1867, the following decree was rendered in this cause in said court, to wit:

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSBURGH. } No. 29, N. S. — In chancery.

This cause coming on to be heard on the demurrer of the defendants to the complainant's bill, and the same being argued and submitted and the court being fully advised in the premises, doth order, adjudge, and decree that the said demurrer, as to the first, second, third, fourth, and
56 fifth causes therein assigned, and to so much of said bill as seeks and prays relief by vacating the deed in said bill mentioned, and by restoration of the property therein conveyed, on the ground of any invalidity of said deed, or forfeiture of the title under the same, be and the same is hereby sustained; and that the sixth and seventh causes of demurrer, or as to so much of said bill as sets up title to relief by pecuniary compensation, for alleged breaches of the covenants in said deed, in the withholding of wharfages alleged to be due to complainant, be overruled, and the bill is retained as to said claim for pecuniary compensation; and the complainant thereupon asked leave to amend his bill, which is granted.

And afterwards, to wit, on the 17th day of March, A. D. 1868, came the defendants, by their solicitor, W. P. Harris, and filed their answer to the bill of complaint herein, as follows, to wit:

THE UNITED STATES OF AMERICA:

In the circuit court of the United States, southern district of Mississippi.

THE MAYOR AND COUNCIL OF THE CITY OF Vicksburgh, def'ts,
at the suit of
CHARLES K. MARSHALL, COMPL'T.

57 The answer of The Mayor and Council of the City of Vicksburg

to the bill of complaint exhibited against them in said court, by Charles K. Marshall, complainant:

These defendants, reserving all exceptions to defects of said bill in matters of law, for answer to so much thereof as it is material to answer, answering, say that it is true, as stated in said bill, that in the year A. D. 1836 The Mayor and Aldermen of the City of Vicksburg, of whom the respondents are the successors, filed their bill in the superior court of chancery to enjoin perpetually certain actions of ejectment which had been brought against them by one Rapplege, and to quiet their title to the strip of land known and designated as commons and Levee street in the city of Vicksburg; and they admit that on appeal to the high court of errors and appeals of the State of Mississippi, that court reversed the decree of the superior court of chancery, which was in favor of the title of the said mayor and aldermen, representing the corporation of Vicksburg, dissolved the injunction which had been granted, and dismissed the bill; and they also admit that the title of the city of Vicksburg was derived from an act or acts of dedication
58 by one Newit Vick, in his lifetime, and afterwards carried out and confirmed by John Lane, who was appointed by the proper court his administrator with the will annexed, of said Newit Vick.

Respondents also admit that said Rapplege, Vick, Bodley, and Prentiss, mentioned in the complainant's bill as claiming under W'm and J. W. Vick, took possession of said commons and Levee street and occupied and used the same as their private property, including the landing and wharf attached thereto, and that lots laid off by the said parties on said commons were, under general ordinances, applicable to all property held as private property in said city of Vicksburg, taxed, and the claimants or those in possession conformed as other property-holders to general ordinances as to paving and the like. But these respondents deny that the authorities of the city of Vicksburg consented to or approved or acquiesced in the title of the parties aforesaid in any manner, except so far as the subjecting them to the laws of the city may be regarded as such consent or acquiescence, which respondents are advised cannot be so regarded; and they now aver that the city of Vicksburg, and those representing her, have never abandoned their claim to the said commons and Levee street, except by the execution of
59 the deed with the complainant, as set forth in the said bill. Respondents do not undertake to give the legal effect of the decision of the high court of errors and appeals, referred to in the complainant's bill, but they are advised that it was not a conclusive adjudication of their rights; and, as it now appears, if the decision had been in their favor it would have been open to contest by others not parties to that suit, to wit, the female heirs of Newet Vick, who subsequently, as is stated in said bill, notwithstanding the decision aforesaid, succeeded in establishing their title as tenants in common of the said commons and Levee street, with those who held the same under William and John W. Vick in the suit of John Lane and wife and others in the circuit court of the United States.

Respondents, further answering, say they admit that the city of Vicksburg, through her proper representatives, did apply to be admitted as parties to the said suit of John Lane and wife and others, as particularly set forth in said bill, and were upon a state of proof which, in the judgment of the said circuit court, was sufficient to enable them to be so admitted, made parties thereto and filed their answer setting forth the grounds of their claim to the property in dispute; but they
60 deny that the application aforesaid was made to harrass the com-

plainant by groundless litigation. The members of the city government at the time were not personally interested in the suit. They were merely the guardians of the rights of the inhabitants of the city of Vicksburg. They sought the advice of able counsel as to their duty in respect to the rights of the corporation, and were advised that they ought to make the application to be admitted to defend the said suit, and that such application would be successful, and believed that their title was well founded.

Respondents, further answering, say that they believe it to be true, as stated in said bill, that complainant from time to time obtained by purchase the interests of the parties to said suit to the extent stated in said bill, and that he was put in possession of the wharf and landing and lots as he has therein set forth. The character of the claim of the city to said property has been already set forth, and whether it was stale and worthless was a matter to be determined by the court to whom their application in that behalf was addressed.

Respondents, further answering, say that they are not informed as to the means by which complainant obtained money with which to
61 purchase the interests of the other parties to the suit last mentioned for the property in dispute, but suppose it probable that he obtained it in the manner stated, and that he had incumbered the property by mortgages and deeds of trust, but respondents do not know, and are not informed, and do not believe, and therefore do not admit that the creditors of complainant were stimulated to harrass the complainant by the admission of the city of Vicksburg, or the mayor and council as defendants to the said suit, and they demand proof of the allegations of the bill in that respect, if they are to be affected by them.

Respondents again say that the mayor and council of Vicksburg had no other purpose or object in seeking to have their claim adjusted than to discharge a public duty, and had no desire or expectation that the complainant would be constrained by their application aforesaid to make any sacrafice whatever, and the was fully advised of their claim and its precise nature and character. It was distinctly set forth in their answer to the suit aforesaid. There was nothing concealed from him as regards the same, nor any effort made to conceal the true character of their claim; and respondents deny the charge directly made by
62 the complainant that the said mayor and council originated or suggested the compromise into which the complainant entered, and they expressly state and charge that the complainant originated the scheme himself, and by his influence caused his proposition, which is substantially embodied in the deed dated November 21st, A. D. 1851, Exhibit "A" to the bill to be presented to the mayor and council. That complainant himself in person advocated the same before the mayor and council and urged its acceptance by them; it was accepted by them, but not without opposition in the council, and respondents positively aver that they used no solicitation, constraint, fraud, or concealment in procuring the execution of the said deed. It is true there was no pecuniary consideration agreed to be paid by the city, but respondents submit that the deed on its face discloses ample consideration to support it. The city of Vicksburg gave up her claim to the commons and Levee street, a large and valuable property to which her representatives believed her claim well founded, upon which were buildings of great value, among others a valuable hotel known as the Prentiss House, and numerous stores and other improvements; from all of which complain-
63 ant derived and still receives large revenues. She likewise abandoned and ceased to prosecute the suit aforesaid for the said prop-

erty in controversy, thereby compromising her claims with the complainant. The city further bound herself, as a consideration to said deed, Exhibit "A," to establish and maintain permanently the public landing for steamboats, at a point designated in said Exhibit "A;" and this stipulation had reference to and was designed to enhance the value of certain property owned by the said Marshal, complainant, in the vicinity of said landing, and by this means prevented the city of establishing landings elsewhere, which she might have done, and thus have materially affected the income of the complainant and the value of his property. As another consideration the complainant obtained from the city her aid and legislation in enforcing the collection of wharfage and rents, and thus rendered his income from those sources more certain and secure; and respondents aver it as their belief that the estimated advantages so secured and rendered certain to complainant as fully equal to the value of the property conveyed, and not without reason, and respondents therefore deny that the said deed was without consideration.

Respondents, further answering, say that the compromise, the
64 terms of which are set forth in the deed Exhibit "A," was dependent upon the extinguishment of the title to and removal of the wharf-boat, "Gov. Jones," as provided in the said deed, and although the terms of the said compromise were settled as early as November, A. D. 1851, the complainant found himself or represented himself unable to raise the sum of money requisite to purchase the interest of the owners of the said "Gov. Jones," and finally on the 12th of January, A. D. 1852, succeeded in inducing the city to advance for him for that purpose the sum of about $1,900, which sum so appropriated from the city treasury has never been repaid by complainant, and the compromise being considered complete at that date, the mayor and the complainant and his wife severally acknowledged the deed Exhibit "A," and it was filed for record on the 30th of January, A. D. 1852, when the purchase of the Gov. Jones was effected. Up to this time the city of Vicksburg not having possession of the landing, and not having the right to legislate on the subject, there were no ordinances regulating the same, and that subject came up in a few days after the final consummation of the compromise on the 7th day of February, A. D. 1852. The
65 ordinance complained of as violating the terms of the deed Exhibit "A," was passed, and respondents are informed and believe, and charge the fact to be, that the complainant not only assented to the same in express terms and notified his assent to the mayor and council, but actually framed the ordinance himself or assisted in framing the same, and did not then or at any time thereafter dissent therefrom to the said mayor and council, although he at all times had access to them and was in all matters touching his rights under said deed allowed to appear before them in person or by counsel; and so these respondents charge that the reduction in the rates of wharfage on packets, complained of in said bill, was made at the instance of, and with the consent and approval of, said complainant.

Respondents, further answering, say that the Porterfield lease referred to in complainant's bill, and recited in said deed Exhibit "A," merely fixed a maximum rate of charge on packets, leaving the lessor the power to reduce the rate below the maximum, and by the terms of said deed the city of Vicksburg was to take the place and have the powers and privileges of the lessor in the said lease to Thomas Porterfield.
66 Respondents deny that the complainant sustained the loss by this ordinance which he estimates in his said bill; his own idea was, as

respondents believe, that it would, upon the whole, increase his revenues and prevent a resort to penal regulations and expensive litigation consequent thereon, and which a high and discriminating rate of wharfage on packets would have produced.

Respondents, further answering, say that the ordinance of the 7th of June, A. D. 1852, providing for the collection of a "landing fee," was passed in pursuance of a power reserved to the city of Vicksburg in the deed Exhibit "A," on the subject of taxing merchandise, &c., and had reference to and was applied only to trading-boats, and was known to be, and was intended to be, and was in point of fact, a tax on the privilege of selling goods for two days without other tax; and this plainly appears from the ordinance itself and others on the same subject to be found in the volume of the ordinances cited by complainant, and which respondents pray the court to inspect; and this ordinance was passed without opposition from the complainant who well knew its object and meaning; and the receipts of the harbor-master exhibited with the bill is a receipt for that landing fee, and respondents aver that it did
67 not interfere with or lessen the receipts of the complainant for wharfage or in any way tend to his injury or detriment. The proceeds of this tax on trading-boats was devoted to the support of a hospital. The whole amount received from that source by the city, respondents are unable to state, owing to the loss of their books and records, but deny that it amounted to the sum stated by complainant, and, on information, state that it did not exceed in the ten years of complainant's lease the sum of dollars. Respondents, however, state, on their information and belief, that the complainant did not at the time of the passage of said ordinance, nor at any other time, dissent to the same to the mayor and council, although he had the opportunity so to do; and respondents therefore deny that, as to this ordinance or that regulating the wharfage on packets, the complainant made any protest or objection to the said mayor and council. Respondents are not informed, do not know, and therefore do not admit the number of packets and the trips to be as stated in the complainant's bill, and demand proof thereof.

Respondents, further answering, say that they admit that quarantine regulations were made by the city government of Vicksburg as
68 many as three times, as they are informed, to wit, in the years A. D. 1853, A. D. 1855, and A. D. 1858, and that the whole time these regulations prevailed did not exceed six months collectively; but respondents are informed and believe, and so charge the fact to be, that they were established by the consent and, in truth, at the solicitation of said complainant, who gave his consent in writing, but which writing has been lost with other papers and documents of the city. That in giving his assent there was no intimation that the city should pay for that consent or bear the burthen of any loss that complainant might sustain, and the authorities of the city did not suppose that the complainant harboured any design to set up any claim to compensation, for if it had been supposed that compensation in any form would have been demanded, the city council would, as their duty in such case, have demanded to have fixed the amount and form of such compensation; and respondents aver that complainant not only consented to the regulations but removed the wharf-boat with his collector and other agents, to the quarantine station and continued to collect wharfages there. These quarantines were established on the appearance of yellow fever
69 at New Orleans, and were designed to protect the city of Vicksburg from that disease. They were established about the end of

August and generally lasted through September and part of October. That period of the year is generally marked by a decline in the business of the river even when no epidemic disease prevails in New Orleans, owing to various causes of which the low stage of water is frequently one, but when yellow fever prevails in New Orleans there is a still greater falling off in the trade and business of the river, and it is quite probable that the receipts from wharfage were comparatively small during the existence of the quarantine regulations; but respondents do not know, are not informed, and cannot state whether the statements of the bill in this respect are true and do not admit the same, but demand proof thereof. Respondents do not admit that in this or any other matter or thing, they violated the provisions of the deed Exhibit "A," and charge that the act of establishing the quarantines was as much act of the complainant as of the city; and it was in no sense an interruption or interference with his right to collect and receive wharfage and rents as provided in said deed, and that if complainant's profits were diminished it was by his consent and co-operation and by force of cir-
70 cumstances for which the city was in no wise responsible. Respondents deny that they in any case refused to enforce the law and ordinances of the city to compel payment of wharfages in case of delinquency reported to them or of which they had knowledge, but in this respect in all things complied with their obligations.

Respondents, further answering, admit that the Mississippi River was blockaded at Cairo about , A. D. 1861, and that such blockade did affect the commerce of the river. It cut off boats above that point, but it greatly stimulated trade and navigation in all the tributary streams, and the river itself, below that point, and the income from wharfage was nearly equal, if not quite equal, during the whole of the year A. D. 1861, to that of former years; and it is shown by the books of the collectors of complainant, and respondents aver it to be a fact, that down to and in May, A. D. 1862, complainant continued to receive wharfage, and respondents insist that there was no interference with complainant's right to collect wharfage during any of the period to which he was entitled to collect the same, according to the deed Exhibit "A."

Respondents, further answering, state that neither the city of
71 Vicksburg nor her agents were responsible for the war which occasioned the blockade, produced the decline of the commerce and navigation of the Mississippi River; and they are advised, and insist, that such blockade was not a violation or breach of any covenant in the said deed.

Respondents, further answering, deny that they took possession of the wharf and landing before the expiration of the ten years, as alleged in said bill, or excluded, or interfered with, the agents or collectors of complainant in collecting his rents and wharfage during that period, or collected any wharfage, or other income, due to him, and which they refused to pay over to him; and they state and charge, on their information and belief, that the city did not take possession of said landing and wharf until the month of June, A. D. 1862, some months after the time to which they were entitled to the same, according to the deed Exhibit "A," and then by the voluntary consent of the complainant; and that the appointment of the harbor-master was always the province of the city, and this officer was distinct from the collector of wharfages, and was necessary to carry into effect the regulations of said wharf and landing.

Respondents, further answering, say that they do not know, and

72 are not advised, whether unauthorized person or persons, assuming to act as the agents of complainant, collected and received wharfage during the years A. D. 1861 and 1862, and do not admit that statement in the bill to be true, and demand proof; but, on information, state that the city of Vicksburg did not receive any wharfage, and that all that was collected was so collected by persons who acted as the agents of complainant; and they deny that the city, by any act of hers, interfered with or interrupted the complainant in such collections, and deny that they took possession of the wharf and landing before complainant's term expired, as alleged in his bill.

Respondents believe it to be true that the complainant was frequently absent in Virginia, and elsewhere, during the late war; but he was also occasionally at Vicksburg during that time, and was there in the month of June, A. D. 1872, when he surrendered the wharf and landing to the city without preferring any claim for extension of time or for damages to the city. Respondents do not know, but suppose it to be true, that one Watts was appointed wharf and harbor master at some time in A. D. 1861 or 1862, but they are unable to state the time. This was
73 an officer that the city had a right to appoint and which existed during the whole term of the ten years allotted to complainant and prior to that time. Respondents further state that after the wharf and landing was delivered to them in A. D. 1862 by complainant the income from wharfage, owing to the fact that the river was in possession of the federal land and naval forces, was about that time cut off entirely, and no income was received from that source until A. D. 1865, when the wharf and landing was delivered to them by the military authorities of the United States.

Respondents, further answering, admit that since the delivery of the wharf and landing to them in A. D. 1865, the complainant has made propositions to them and has claimed to have a right to compensation for damage, but before the filing of his said bill did not demand the surrender of the wharf and landing; and respondents aver that all propositions of complainant for a compromise were unreasonable and connected with a proposition to purchase by the city of certain property of complainant fronting on the river for $150,000 dollars, with which the mayor and council could not comply without violating their trust,
74 and the said mayor and council, believing that they had not violated any one of the covenants in the deed Exhibit "A" to bill, do not think they ought to pay that or any other sum to complainant, and are compelled to express the belief that the proposition of the complainant was prompted more by a desire to secure to himself some undeserved advantage than any desire to adjust a supposed claim.

Respondents, further answering, positively deny that the mayor and council failed to perform their covenants in good faith or that they interfered, or attempted to interfere, in any way with the rights of complainant under said deed, or that they encouraged, or attempted to encourage, persons to refuse to pay the wharfage or rents to complainant, or that they ever, in any case brought to their knowledge, refused to aid complainant to enforce his rights to the extent of their lawful powers, or that they at any time harrassed his tenants by groundless suits. Respondents admit that in the case of said Butler mentioned, on the complaint of several merchants of the city of Vicksburg, that said Butler, who was the owner or lessee of a wharf-boat, oppressed and harrassed them by illegal exactions, the mayor and council filed a bill in
75 chancery to enjoin him from continuing such practices, and the

said bill was filed under advice of counsel and on reasonable and probable grounds. The said Butler having disobeyed the injunction, he was attached for contempt of the injunction. It is true the bill was dismissed, but respondents are advised that the grounds on which they interfered on behalf of the merchants were sufficient to justify such interference. And respondents aver that this proceeding in no wise injured complainant or interfered with his rights, and was not done with a view to harras him or his.

Respondents, further answering, deny that the mayor and council or the authorities of the city of Vicksburg have changed, or allowed to be changed, the steamboat landing as fixed and designated by the deed aforesaid. They state that if any wharf boats outside those limits are used as landings for steamboats, their position outside the limits was owing to want of room for the time being, and never designed to be a change of the landing so established and fixed, and in no wise affected the interests of complainant, or the purpose of the stipulation fixing the landing.

Respondents, further answering, admit that the mayor and
76 council leased part of the front, as stated in the bill, to the Vicksburg and Shreveport Railroad Company, but for the sole purpose of enabling said company to erect a depot for freights, and not for the purpose of establishing any landing, and no landing was so established; and respondents are advised that such lease, for the purpose aforesaid, was not in violation of the letter or spirit of the covenants of the said deed; and they aver that such lease in no wise interrupted or interfered with, or in any manner injured, the rights of complainant. Respondents also admit that they have also leased other portions of the front to parties for the purpose of erecting saw-mills, but for that purpose only; and they are advised and insist that they had the right to make such leases.

Respondents admit that the income received from the property in controversy by the city since possession was given to them in A. D. 1865, has been expended, and the current receipts at this time are being expended in paying the debts and legitimate expenses of the city, but are not wasted as alleged. They deny the allegation that the city owns no other property, and aver that they own other real estate of great
77 value, and that their resources are ample to satisfy any decree which may be rendered against them in this cause.

Respondents, further answering, deny that they have in any manner violated their covenants with the complainant or have incurred a forfeiture of their title to the property in controversy or liability to complainant for damages or other demand.

All which matters and things respondents are ready to aver, maintain, and prove; and, having fully answered the allegations of said bill, pray to be hence dismissed with their reasonable costs and charges most wrongfully sustained.

EDWIN F. BROWN,
Mayor, &c.

W. P. HARRIS, *Sol'r.*

THE STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, a justice of the peace in and for said county of Warren, Edwin F. Brown, mayor of the city of Vicksburg, who, being duly sworn according to law, on his oath saith that the matters and things in the within answer alleged and set forth, so far as they have come to his own knowledge, are true, and so far as they are derived

from the knowledge and information of others he believes them to be true.

EDWIN F. BROWN,
Mayor of the City of Vicksburg.

Sworn and subscribed March 14th, A. D. 1868, before me.
W'M T. PAGE, *J. P.* [SEAL.]

Filed March 17th, 1868.

G. T. SWANN, *Clk.*

78 And on the 18th day of June, A. D. 1868, the following replication was filed in this cause, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi:

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSBURG. } N. S. 29.—In equity.

And the complainant, for replication, comes and says that the matters and things stated in his bill are true as therein stated and alleged, and that the matters and things in denial thereof, stated in the answer of defendants, are not true as therein stated; and this he is ready to verify and maintain as the court shall direct.

W. AND J. R. YERGER, *Sol's.*

Filed 18th June, 1868.

GEO. T. SWANN, *Clk.*

And on the 18th day of June, A. D. 1868, came the complainant herein and filed his amendment to the bill of complaint herein, as follows, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi:

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSBURG. } N. S. 29.—In equity.

The complainant, by leave of the court, amends his bill by in-
79 serting the following words on page 23, following after the word "account" in the 10th line from the bottom of the page, to wit: "But if your honors shall believe that your orator is not entitled to rescind and annul the contract aforesaid on the facts stated herein, then your orators pray that your honors will decree that your orator shall not have computed against, as a part of the period of ten years, for which he was to have the use and enjoyment of said wharf and landing, the time that he was interrupted in the use and enjoyment of the same, by reason of the quarantine of the city of Vicksburg and the removal of the wharf-boat as aforesaid in consequence of the yellow fever; nor that period of time in which his use and enjoyment of the same was interrupted and disturbed by reason of the blockade and the war; and he prays that such period of time shall be ascertained by a commissioner of

this court, and that the said mayor and council shall account to your orator for the rents and profits realized from said wharf for that period of time, to commence and be computed from the time said mayor and council, after the termination of the war, took possession of said wharf and begun to collect wharfage and tolls for the use of the same; or if not charged with such rents and profits so received, that your
80 honor will decree that said wharf shall now be put into your orator's possession to be retained and used by him and the wharfages collected for the period of time he was interrupted in the use and enjoyment thereof, so as to make full ten years' uninterrupted use and enjoyment of the same by him."

Filed 18th June, 1868.

GEO. T. SWANN, *Clk.*

And afterwards, to wit, on Saturday the 10th day of April, 1869, it being a day of the April special term of said circuit court, begun and held at Jackson, in said State of Mississippi, on Monday the 5th day of April, A. D. 1869, the following order was made in this cause by said court and entered on the minutes thereof, to wit:

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg. } N. S. 29.—In equity.

It is ordered, on the motion of the defendants, and the complainants assent thereto, that the time for taking proof in this cause be enlarged and extended to the 15th day of May next.

81 And afterwards, on Tuesday, May the 24th, 1869, it being a day of the regular term of said circuit court of the United States for the southern district of Mississippi, begun and held at Jackson, Mississippi, on the first Monday of May, A. D. 1869, the following order was made in this cause by said court, and entered on the minutes thereof, to wit:

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSburg. } No. 29, N. S.—In chancery.

By consent, ordered that time to take testimony in this cause be extended to the first Monday of July next.

And on the final hearing of this cause in said circuit court of the United States, the following depositions and testimony was introduced and read to the court in behalf of the complainant herein, to wit:

UNITED STATES OF AMERICA,
State of Mississippi, Southern District, City of Vicksburg, ss:

In the United States circuit court for the southern district of Mississippi.

CHARLES K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

82 Deposition of MARMADUKE SHANNON, a witness produced, sworn, and examined at the city of Vicksburg, in the county of War-

ren, and State of Mississippi, by consent of parties, by their atto's; and on the interrogatories and cross-interrogatories hereto annexed (on the part of the plaintiff) in the above-entitled cause, pending in the U. S. cir. court for the southern district of Mississippi.

The said witness being of lawful age, and being duly sworn and examined, in answer to said interrogatories and cross-interrogatories, deposeth and saith:

Interrogatories to M. Shannon.

Int'y 1st. In what business were you engaged in 1861 and 1862?

2nd. Are you acquainted with the facts respecting the prevalence of the yellow fever in the city of Vicksburg in the years 1853, 1854, 1855, and any other years of its prevalence till 1860?

3rd. Can you furnish a copy of the acts and ordinances passed by the mayor and councilmen of this city quarantining the city and stopping steamers from landing, and will you furnish said copies? Can you furnish a copy of the mayor's annual settlement, 1852?

4th. About what number of months was business suspended,
83 and the customary arrivals of steamers at the wharf cut off by the prevalence of the plague in those years?

W. YERGER and
MARSHALL AND MILLER,
For Compl'ts.

Cross-interrogatories.

1st. From what source did you get copy of Acts and Ordinances of Mayor and Council of Vicksburg, passed during prevalence of yellow fever, to quarantine city of Vicksburg, and settlement of mayor in 1862?

Cross-int. 2d. Do you know whether or not Mr. Marshall consented to the establishment of quarantine by mayor and council of Vicksburg during existence of yellow fever? State all you know about it.

SIMRALL & YOUNG, *for Def'ts.*

Ans. to 1st. I was engaged as publisher and proprietor of the Vicksburg Whig.

Ans. to 2d. I resided in the city of Vicksburg then, and have resided there ever since. I remember that yellow fever prevailed in the city in the summer and fall of 1853, 1854, 1855, and 1858.

Ans. to 3rd. I furnish herewith, and make the same part of this answer, all of the copies and extracts in my possession of the paper
84 alluded to, and also all other papers touching the matters in controversy between the parties hereto, and they are marked A, B, C, D, E, and F.

Ans. to 4th. I can't answer. I don't know.

Cross-examination.

Ans. to 1st. X. They were furnished me by the mayor and council of the city of Vicksburg for publication in the Vicksburg Whig, of which paper I was the publisher and proprietor.

Ans. to 2d. I only know as appears in the exhibits filed herewith and before named. I have no personal recollection about it.

M. SHANNON.

I, Lazarus Lindsay, commissioner of the U. S. cir. court for the southern dist. of Miss., do hereby certify that Marmaduke Shannon, whose place of residence is Vicksburg, Miss., was by me sworn to testify the whole truth of his knowledge touching the matters in controversy in the cause aforesaid, and that his answer to the interrogatories and cross-interrogatories hereto annexed was reduced to writing by me, and signed by him in my presence, on the 2nd day of October, 1869, at my office in the city of Vicksburg, Miss., neither party being present in person nor by attorney.

LAZ. LINDSAY,
Commissioner.

Commissioner's fee, $10 00.

85 *Exhibit A in deposition of M. Shannon.—Laz. Lindsay, Com'r.*

Exhibit "A" to deposition of M. Shannon is as follows:

From Tri-weekly Whig, August 2nd, 1855, 3rd page.

An ordinance to quarantine the city of Vicksburg.

SECTION 1. That from and after the passage of this ordinance, and three days' public proclamation by the mayor, that the following quarantine be established at the point below the city heretofore selected by the board of health, as follows: All boats arriving from any infected ports where yellow fever prevails shall be required to stop at the quarantine station, and shall be immediately boarded by the health officer, who shall examine thoroughly the same; and if there be found any person or persons aboard sick of yellow fever, he shall have said person or persons landed at the quarantine station and properly provided for. He shall require said boats to wash down their decks, open their hatches, and, as far as possible, to be thoroughly cleansed and purified. And after said boats shall have remained ten hours at said quarantine station, the health officer shall re-examine the same; and if found in good condition and entirely free from any epidemic disease, may, in his discretion, permit them, with their healthy passengers and cargoes,
86 to come to the city and transact their usual business; said cargoes to be discharged and to remain at the quarantine until the health officer shall authorize their removal.

SECTION 2. That the health officer and quarantine marshal be required to keep enforced the strictest non-intercourse between all persons (physicians excepted) from the city and the sick at the quarantine hospital.

SEC. 3. That the board of health be authorized to have erected a suitable building for the sick at the quarantine station, and, if deemed necessary, a shed for the storage of goods.

SEC. 4. That no person who shall have been within any infected port within ten days shall be permitted to come to the city until he shall have first taken an oath not to remain in this city nor to return to the same for the ensuing ten days: *Provided, however*, That persons having had the yellow fever shall be exempted from the provisions of this section.

SECTION 5. That any person who shall violate any of the provisions of this ordinance shall, on conviction thereof in the mayor's court of Vicksburg, be fined in the sum of not less than fifty nor more than
87 five hundred dollars, and be imprisoned for thirty days, at the discretion of the mayor.

SECTION 6. That all ordinances, or parts of ordinances, in conflict with this ordinance be, and the same are hereby, repealed.

Exhibit "B" to deposition of M. Shannon, to wit:

Quarantine, 1853.

CITY COUNCIL.

At a called meeting of the board of mayor and council of the city of Vicksburg, held at the city hall on Saturday, July 23rd, 1853. Present,
* * * * * * * * * * * * * *

The mayor stated the object of the meeting to take into consideration the propriety of reviving the ordinance regulating quarantine.

Mr. Bender offered the following preamble and resolutions, which was adopted:

Whereas this board has satisfactorily ascertained that the yellow fever is prevailing to a considerable extent in New Orleans, and believing that its introduction, where there are no local causes to induce it, may be effectually prevented by a rigid quarantine: Be it therefore

88 *Resolved*, That the quarantine laws be enforced upon all vessels, steamboats, passengers, and merchandise arriving from New Orleans, or any other point where yellow fever prevails; and that the health committee be authorized to make all necessary arrangements to enforce the same without delay.

Resolved, That all boats landing at the quarantine station be subject to pay such wharfage as they would have been liable to pay at the usual landing place in the city.

Resolved, That this board accede to Porterfield & Co.'s "proposition No. 2," and establish for the time being, in accordance therewith, the city landing at the foot of Crawford street.

Resolved, That Dr. C. B. Buckner be, and he is hereby, appointed health officer, on the terms and conditions of the ordinance regulating quarantine passed Sept. 4, 1853.

Mr. Crawford called for the ayes and noes.

Ayes.—Messrs. Bender, Hedrick, Turley, and Byrne, mayor.

Noes.—Messrs. Crawford, Bruner, and Donovan.

The following proposition of Porterfield & Co. was therefore declared accepted:

To the MAYOR AND COUNCIL *of the City of Vicksburg:*

GENTLEMEN: We agree, if the mayor and council establish
89 the quarantine law, to drop down forthwith, with the Magnolia boat, to the old quarantine ground, and provide all necessary rooms, bedding, &c., &c., for all who are by law entitled to receive them from the city, provided that the city will require all boats descending to make their landings at the landing opposite the Prentiss House. If this arrangement is entered into between ourselves and the city, our terms are five hundred dollars per month, during the continuance of the quarantine.

We hereby agree and bind ourselves to bring the wharf-boat back to its present location, between Clay and China streets, agreeably to the contract with C. K. Marshall, as soon as the quarantine resolutions are rescinded.

(Signed) PORTERFIELD & CO.

* * * * *

On motion of Mr. Bender, the board adjourned.

J. S. BYRNE, *Mayor.*

Exhibit C in deposition of M. Shannon.—Laz. Lindsay Com'r.

EXHIBIT "C."

From Vicksburg Daily Whig, August 25, 1858.

YELLOW FEVER AT THE CITY HOSPITAL.

VICKSBURG, *Aug.* 24, 1858.

To Hon. M. C. FOLKES, *Mayor of the City of Vicksburg:*

We report to you a case of yellow fever in the city hospital.
90 The subject arrived in our city from New Orleans, on Tuesday, the 17th inst., sickened on the next day, was admitted to the city hospital on the 23rd, and died this day, 24th. You will see from the above statements that this case came from abroad and should not alarm our citizens.

G. P. CRUMP, M. D.,
Ch'm'n City Hospital Com.
H. H. HUBBARD, M. D.,
Physician of City Hospital.

From Daily Whieg, Vicksburg, August 26, 1858.

A CASE OF YELLOW FEVER IN THE CITY.

Mr. Walker, a young man in the employ of Mr. Butler, on the wharf-boat, has been sick for the past two or three days at the residence of Mr. B. Yesterday a consultation of physicians was held, and the case pronounced yellow fever. It was thought last night it would prove fatal before morning.

August 27, 1858.

ANOTHER CASE OF YELLOW FEVER.

A young man by the name of Hopkins, son of the Rev. W'm A. Hopkins, has been sick at his father's residence in Springfield for two
91 or three days. The case has been pronounced yellow fever. It is believed, however, that he will recover.

From Daily Vicksburg Whig, Sept. 2nd, 1858.

YELLOW FEVER IN THE CITY.

Three cases of yellow fever were reported in the city yesterday. One of them was young Mr. Hammet, clerk in the post office. A man named McMurry was also taken in the southern part of the city. The other, whose name we could not learn, was taken to the hospital. The weather yesterday was several degrees warmer than the few days previous, and we fear the return of the summer heat will bring out other cases of yellow fever.

P. S.—We learn that Mr. McMurry died last evening about dark.

Daily Whig, Sept. 7, 1858.

HEALTH OF THE CITY.

We have the pleasure of stating that there has been no new case of yellow fever in our city for several days past. Those who are sick are generally convalescent.

We learn from Dr. Hubbard, the hospital physician, that two deaths

occurred at the city hospital on Saturday night of yellow fever,
92 both cases having been left here by boats from New Orleans.

From Vicksburg Daily Whig, Sept. 14, 1858.

PROGRESS OF THE YELLOW FEVER.

The yellow fever has again made its appearance in Vicksburg. There are now some four or five cases under treatment in the city, and several at the hospital. The number of deaths will be seen by the sexton's report. The unacclimated material in the city is very small, and there is no probability of its becoming epidemic. We again advise our fugitive friends to remain away until frost.

Daily Whig, November 9, 1858.

HEALTH OF THE CITY.

We are gratified to be able to state that, in the opinion of our medical faculty, the absentees can now return in safety. We would advise them, however, to take the precaution of having their houses well ventilated.

Exhibit D in deposition of M. Shannon.—Laz. Lindsay, Com'r.

EXHIBIT "D."

CITY COUNCIL.

At a regular meeting of the board of mayor and council of the
93 city of Vicksburg, held at the City Hall on Monday, March 1st, 1852: Present, N. G. Bryson, mayor, and Messrs. Crawford, Buck, Arthur, Woodman, Sparke, and Donavan, council.

LETTER FROM MR. C. K. MARSHALL.

"For no consideration can I consent that the wharf-boat shall lie either above or below the limits contracted for in my lease to Mr. Porterfield; and if the city council shall allow said boat to pass its proper limits, I shall deem it a violation of the existing contracts, and forthwith proceed to reassert my own claims and ownership in the wharf and landing.

"Respectfully, yours,

"C. K. MARSHALL."

Mr. Arthur offered the following preamble and resolution, which were unanimously adopted:

Whereas the wharf-boat Magnolia, kept for the landing of steamers, having been removed from the steamboat landing provided for and agreed upon in the late agreement and ordinances regulating the steamboat landing, without the consent, advice, or knowledge of the mayor and council; and whereas Mr. Marshall has notified the council that he will not consent to allow any change of position of said wharf-
94 boat, under the penalty of a forfeiture of the contract made between him and this board: Be it therefore

Resolved, That the mayor be instructed to notify the parties owning or controlling the said wharf-boat to have the said boat returned to the place designated between the south side of Clay and the north side of China streets, within forty-eight hours after notice of this resolution; and, if the same be not complied with, the mayor is hereby instructed to employ counsel to obtain an injunction to prevent its use at any other point within the city, or any other wharf-boat for that purpose, and to

prevent steamboats from landing at any other point within the city; and to ask in said bill of injunction that the contract or lease authorizing the establishment and maintenance of said wharf-boat, or any other wharf-boat, be declared forfeited and null, and be set aside.

Exhibit C in deposition of M. Shannon.—Laz. Lindsay, Com'r.

EXHIBIT "E."

CITY COUNCIL.

95 At a called meeting of the board of mayor and council of the city of Vicksburg, held at the city hall on Tuesday, January 27, 1852: Present, N. G. Bryson, mayor, and Messrs. Crawford, Buck, Woodman, Markham, Sparke, and Donovan, council.

The mayor laid before the board the deed from C. K. Marshall to the city, of the landing, together with the accompanying documents, and a letter from Mr. Marshall to Mr. Buck, as chairman of the landing committee.

Whereupon Mr. Sparke offered the following resolution, which was adopted:

Resolved, That the mayor be instructed to receive the deed of C. K. Marshall for the city landing, and issue scrip for one thousand dollars already appropriated by this board; the same to be done without any other conditions than those expressed in the deed itself.

Mr. Woodman offered the following amendment, which was lost:

Provided, That Mr. Marshall comply with the same within twenty-four hours after personal notice of this resolution by the mayor.

Exhibit F in deposition of M. Shannon.—Laz. Lindsay, Com'r.

EXHIBIT "F."

FINANCE OF THE CITY OF VICKSBURG.

To the MAYOR AND COUNCIL *of Vicksburg:*

96 The undersigned committee appointed to settle the accounts of the city officers for the municipal year ending March, 1852, report they have performed that duty and return the following settlements:

Thomas J. Randolph, assessor and collector of taxes:

To amount of bills due prior to 1850 in his hands for collection	$14,554 06
To amount of bills due for the year 1850 in his hands for collection	6,065 96
To amount of real and personal assessments for 1851	19,679 20
To am't of 515 polls assessed for 1851	515 00
To am't of 8 free negroes assessed for '51	40 00
	$46,790 34

CREDITS.

By bills prior to 1850 returned uncollected	$14,270 05
By bills for 1850 returned uncollected	5,988 38
By bills for 1851 vs. property removed from the city and uncollected	243 25

By bills for poll taxes 1851 returned uncollected.....	
By bills for 1851 vs. U. S. Bank, in suit, returned	6,678 50
Returned to committee	$27,462 18
By am't of bills for 1851 in his hands uncollected.....	$53 69
By com. on $19,679 40, ass't of 1851, at 2 per cent.	393 58
97 By com. on $565, ass't poll-tax 1851, at 2 per cent..	11 30
By com. on $12,521 76, collected 1851, at 3 per cent.	375 65
By com. on 5,926 12, licenses of 1851, at 5 per cent.....	296 30
By com. on $403, poll-taxes collected 1851, at 3 per cent..	12 09
By com. on $184 01, bills prior to 1850, collected at 3 per cent.....	5 52
By com. on $77 58, bills for 1850, collected at 3 per cent..	2 33
By cash paid hospital fund, billiard and ten-pin license for '51, per receipts	1,600 00
By cash paid city treasurer, per receipts	16,577 70
	$46,790 34

Oliver P. Moore, wharf and harbor master:

To am't collected for 1851 for 19 licenses flat-boats.....	$190 00
To am't collected for 1851 for ad. val. taxes.....	234 59
	$424 59

CREDITS.

By commissions for collections	$106 13
By cash paid city treasurer	318 46
	$424 59

98 John W. Wilson, market master:

To am't collected in 1851 from transient vendors...	$49 51
To balance due city last year per settlement.....	1 60
	$51 11

CREDITS.

By commissions on collections.....	$12 43
By cash paid city treasurer	38 92
	$51 35

He receives a salary of $20 per month.

P. H. Magee, city marshal:

To am't fines collected for 1851.	$573 60
To am't for sale of hogs running at large.....	154 65
	$728 25

CREDITS.

By commissions on fines collected	$56 33
By commissions on sale of hogs	77 32
By cash to hospital fund, pro sale hogs	77 32
By cash p'd city treasurer, fines, &c.	517 28
	$728 25

He also receives a salary of $500 per year.

R. S. Roome, superintendent hospital:

To am't received of private patients in 1851, after deducting his fees	$251 65
To am't received of private patients in pest-house	68 00
	$319 65

99 CREDITS.

By cash paid to hospital fund	$319 65

He also receives a salary of $400 per annum, and board with his family.

N. G. Bryson, mayor and ex-officio treasurer of hospital fund:

To am't on hand at last settlement	$126 46
To am't rec'd for 17 retail licenses for 1851	4,250 00
To am't net proceeds from pay patients, 1851	319 65
To am't net proceeds sale of hogs from city marshal	77 32
To am't of T. J. Randolph, col. for ten-pin licenses, 1851	600 00
To am't of T. J. Randolph, for billiard licenses, 1851	1,000 00
To am't from Warren County for 1850, annual allowance	500 00
	$7,373 43

CREDITS.

By am't of accounts paid for '51	$6,795 34
By am't on hand to meet outstanding accounts	578 09
	$7,373 43

N. G. Bryson, mayor and ex-officio city treasurer:

	To cash on hand last year, per settlement	$8,327 13
100	To cash received of T. J. Randolph, collector	18,577 70
	To cash received of O. P. Moore, wharf master	318 46
	To cash received of P. H. Magee, city marshal	517 28
	To cash received of J. W. Wilson, market-master	38 92
	To cash received for sale of mules, paid	68 50
	To cash of G. S. Yerger, for lot in graveyard	30 00
	To cash of R. Hammet & Co., for lot in graveyard	15 00
	To cash of J. D. Fondren, for lot in graveyard	15 00
	To cash of W. Magee, for lot in graveyard	15 00
	To cash of J. Thatcher, for lot in graveyard	15 00

	To cash of J. Hoffman, for lot in graveyard	15 00
	To cash for redemption of lots sold for taxes, Rigby, Yoste, and Schmaling	31 87
	To cash of John Rapp, for fine	5 00
	To cash for licenses for dogs	27 20
	To cash, post notes, change tickets, &c., received of J. Baucker	1,553 00
		$27,574 39

CREDITS.

	By cash for workhouse, per vouchers	$1,697 84
101	By cash on new graveyard	1,053 45
	By cash to building Washington Engine street	1,000 00
	By cash, attorney's fees, compromise of landing	1,200 00
	By cash, paid judgment in U. S. court, which was bearing interest at 8 per ct., (J. Baucker)	1,901 49
	By am't post notes, change tickets, &c., and interest, taken up and cancelled	2,246 11
	By am't expenses street hands for last year, up to Jan. 1st, 1852, the time of change	3,467 09
	By am't salaries mayor, marshal, market-master, and scavenger, and allowance for vagrants	2,507 45
	By am't other expenses, guttering pavements, McAdamizing streets at crossings, fees in suits, taking depositions, repairs, cisterns, market-house, printing, and other incidental expenses	3,705 76
102	By am't of scrip of Madison Parish, La., on hand, being advance to the hands to complete the levee and road to a point opposite the city until the taxes of the parish could be collected. It bears interest at 6 per cent. till payment	1,500 00
	By cash in treasury	7,295 10
		$27,574 39

The committee return herewith all the old bills and bills of 1851 unsettled, amounting to $27,462 18, which they advise to be filed in the treasury office. A large portion of this amount is against the U. S. Bank, and may eventually be made, as the question is now before the courts of the State for adjudication. A portion of the balance may also be made, and such bills as offer any prospect of collection may be separated and placed in the hands of the collector for that purpose. An unusually small amount (53 69) of the bills for 1851 remain unsettled, which shows the punctuality of the people in paying their taxes, and were left in the hands of the collector to be accounted for hereafter. The city officers have accounted for all moneys in their hands, as will be seen by the foregoing settlements. Appropriations have been demanded this year to complete public buildings and other improvements necessary for the wants of the city, which will save much expenditure for the future. The work-house is now complete and will materi-
103 ally aid the officers in holding in check those disorderly persons who infest our city, whilst it will soon repay its cost to the treasury by enabling the officers to collect the fines imposed for violations of

the law. The new graveyard is now complete and its cost will soon be repaid by the sale of lots. Engine-houses and public cisterns sufficient for the present wants of the city have been built; substantial stone gutters, sidewalks, crossings, and paving in the most public thoroughfares, have been made. A judicious and economical system of working the streets has been adopted, by which an annual saving will be made; and a vast amount of substantial and permanent work has been done on the streets. The public land question has been compromised and settled, as we trust, for the future repose and interests of the city. The financial affairs of the city are in a healthy condition, the treasury meeting all its acknowledged liabilities at par in specie, whilst an examination of the official records and assessments afford positive of the growth and advancement of the city in the increased value of its real and per-
104 sonal *and personal* property, as well as the extension and permanency of its commercial and other business affairs. The Southern railroad bill having passed the legislature, the whole management of that question, so important to the future welfare and prosperity of the city, will devolve upon the next council, and it affords us gratification to know that the present board will be able to transfer the affairs of the city in such good credit and condition to its successors to be elected on Monday next, not doubting but that the people will select judicious representatives, who will be called on to act upon the most important measures ever brought before the people affecting their interests and the future welfare and prosperity of our growing commercial city.

ALEX. H. ARTHUR,
E. S. CRAWFORD,
W. F. MARKHAM,
Committee.

MARCH 12, 1852.

Endorsed: C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of M. Shanon for plaintiff.

Filed Octo. 8, 1869.

G. T. SWANN, *Clk.*

Opened by me in court Nov. term, 1869.

GEO. T. SWANN, *Clk.*

105 *Deposition of John K. Yerger, to wit:*

J. K. YERGER:

1st. What is your name?

2nd. Did you reside in Vicksburg between the years 1851 and 1853, and in what business were you engaged?

3rd. Were you acquainted with the business of Messrs. Fraisse & Co., and do you know their having a mail contract from the Post Office Department of the U. S. gov't?

4th. What became of the mail contract, and did Fraisse & Co. fulfil it or sell it; and, if they sold it, what did they get for it?

5th. About what time did the transactions take place?

WM S. YERGER and
MARSHALL AND MILLER,
For Plaintiff.

Cross-interr'y 1. Who constituted the firm of Fraisse & Co.? State any connexion between Fraisse & Co. and C. K. Marshall, or city of

Vicksburg, in reference to matters inquired about in 3, 4, and 5 direct interrogatories.

SIMRALL AND YOUNG,
Sol's for Def't.

Deposition of John K. Yerger.

Answer to 1st inter'y. My name is John K. Yerger.

" to 2d. I resided in Vicksburg from Sept'r, 1840, to
106 the summer of 1851. Previous to 1849 I was engaged in the commission business. After the election of Gen'l Taylor to the presidency I was appointed U. States mail agent for the city of Vicksburg, and established, in connexion with other parties, a " wharf-boat ;" then I received and dispatched the river mails. The wharf-boat was the hull and cabin of the steamboat Gov. Jones. The entire profits of the business was to enure to me ; the boat belonged to other parties.

" to 3rd. In the summer of 1851 I sold to Messrs. Fraisse and Rowe all my interest and good will in the business, together with the mail pay I was to receive from the Post Office Department, for the sum of twelve hundred dollars, and appointed Mr. Rowe, of the firm of Fraisse and Rowe, my deputy to receive and forward the mails till he could obtain the appointment from the department, which he did upon my recommendation. The " wharf-boat " and commission business was *was* conducted by them under the name and style of Fraisse and Rowe.

Answer to 4th int. In the summer of 1851 I removed from Vicksburg to Memphis. Messrs. Fraisse and Rowe then had charge of the
107 wharf-boat, Mr. Rowe being the mail agent. Some time in the early part of 1852 I visited Vicksburg, and was informed by Messrs. Fraisse and Rowe that they had sold out to Mess. Porterfield & Co., and that the city of Vicksburg had or was to pay them one thousand dollars as a compensation to them for the mail agency, as the city was anxious to have the entire control of the landing, and to save litigation they thought it best to sell out.

Answer to 5th inter. I think the transactions and sale above alluded to took place in Jan'y or Feb'y, 1852.

Answer to 1st cross-inter. Ceasar Fraisse and ——— Rowe composed the firm of Fraisse and Rowe ; as well as I recollect, the Christian name of Mr. Rowe was Frederick ; I know of no connexion of business matters between Mess. Fraisse and Rowe and C. K. Marshall.

JOHN K. YERGER.

Sworn to and subscribed before me, clerk of the circuit court of the U. States, the 18th October, 1869.

GEO. T. SWANN, *Clk.*

Endorsed: No. 29, N. S. Chancery. C. K. Marshall vs. City of Vicksburg. Dep. of J. K. Yerger for compl't.

Filed Octo. 18, 1869.

GEO. T. SWANN, *Clk.*

108 *Deposition of W. E. Thomas.*

Interrogatories to W. E. Thomas in the case of C. K. Marshall vs. The City of Vicksburg.

1. State your name, residence, and occupation.

2. Have you ever resided in Vicksburg, and if so at what time and what was your business pursuits ?

3. Can you tell how many flat-boats landed at the city during your connexion with the business, and if on landing they paid wharfage fees, and what and to whom?

4. State what you know of the collection of an extra charge of one dollar for wharfage collected by the city for its own use.

5. State what you know of the non-collection of five dollars per trip on the semi and tri weekly packets plying on the Yazoo River, and why only $5 00 per week instead of $5 00 per trip was collected.

6. State what you know of the prevalence of yellow fever in Vicksburg from 1852 to 1861, and how much time was lost by the action of the quarantines or the violence of the plague and consequent absence of citizens within above years. Also, how much time generally
109 elapsed after the subsidence of the plague before steamboating was re-established.

7. What was the effect of the plague upon the flat-boat trade?

8. State anything you know of Mr. Marshall's designs to seek redress in the courts of the country if the city council finally refused compensation for the items of loss and deprivation of privileges set forth as above.

W. YERGER and
MARSHALL AND MILLER,
For Compl't.

Cross-interrogatories.

1. Did you hold during any portion of the time enquired about an official connexion or relation to the city of Vicksburg, and what was it?

2. What are your means of knowledge of the wharfage collected, landing of boats, steam and flat, during the times?

3d. What was the effect of the presence of yellow fever in Vicksburg on business, steamboating, and flat-boats?

4. Would not the wharfage from boats have been diminished in receipts because of the existence of yellow fever had there been no quarantine?

5. Did not C. K. Marshall consent to the quarantines or acquiesce in them?

110 6. If you state any effect on the flat-boats because of yellow fever, explain fully. Did flat-boats stay away because of yellow fever or because of quarantine?

7. Did not C. K. Marshall know of the existence of quarantines? Did he at the times of their existence complain to the council, or protest, or object?

SIMRALL AND YOUNG,
For Def'ts.

Answers to interrogatories to W'm E. Thomas, in the case of C. K. Marshall vs. The City of Vicksburg:

Answer to interrogatory No. 1. My name is W'm E. Thomas; residence, Richview, county of Washington, State of Illinois; occupation, horticulture, fruiter, and deputy county surveyor.

Answer to interrogatory No. 2. I have. I was a resident of Vicksburg from the fall of 1846 to June, 1861; and during a portion of that time, to wit, from December, 1853, to June, 1861, I held the office (and acting as such) of collector of wharfages for the city of Vicksburg, having been legally appointed to that office at a regular meeting of the mayor and council of the city of Vicksburg.

Answer to interrogatory 3d. I can. By reference to my registry kept at that time and now in my possession, I find the number

111 of flat-boats landing or that landed during that time to be about three thousand three hundred and forty-eight, (3,348.) Each boat on landing paid me two dollars for landing. In addition to that there was charged (during the whole time) and collected a "landing fee" of one dollar of each boat, and which landing fee of "one dollar" was collected by J. H. Moore, and after his decease by one W'm H. Auter, each acting by authority of the city council under the style of wharf-master.

Answer to interrogatory No. 4. I know that there was an extra "landing fee" of one dollar collected of each flat-boat by the wharf-masters, respectively, Moore and Auter, before mentioned, and acting by authority of the mayor and council; and none of the revenue so collected was ever paid to me. The complainant, C. K. Marshall, always insisted and gave notice to the mayor and council that the collecting and withholding from him the revenue so collected was in violation of their contract with him, and he should hold them accountable for the same.

Answer to interrogatory No. 5. I know that only five dollars per
112 week was collected of the Yazoo packets instead of five dollars per trip. C. K. Marshall always told that he was justly entitled to five dollars per trip. The city refused to authorize its collection, but he should hold them accountable for it in the end.

Answer to interrogatory No. 6. There was yellow fever in Vicksburg and quarantine regulations some considerable portion of the time during a portion of the years from 1852 to 1861. During the years 1853, 1854, 1855, and 1858 quarantine was established by the city authorities amounting, in the aggregate, to a little over twelve months' time.

Answer to interrogatory No. 6, continued. It generally to from two to four weeks to re-establish steamboating again each year, to any considerable extent.

Answer to interrogatory No. 7. The flat-boat trade was nearly, if not entirely, suspended.

Answer to interrogatory No. 8. Mr. Marshall always expressed his determination to seek redress in the courts of the country, if the mayor and council should finally refuse him compensation for the items of loss set forth in these interrogatories.

W'M E. THOMAS. [SEAL.]

Subscribed and sworn to before me, W. P. Cooper, a justice of
113 the peace in and for the county of Washington and State of Illinois, this 23rd day of October, A. D. 1869.

W. P. COOPER, [SEAL.]
Justice of Peace.

Cross-interrogatories.

Answer to cross-interrogatory No. 1. I did. By an agreement with the city, C. K. Marshall reserved the right to nominate some one of his own selection to collect the revenues or wharfage, and the city, on her part, agreed to officially appoint such nomination; consequently, C. K. Marshall presented my name to the city council as a suitable person to fill the office; and at a regular meeting of the mayor and council, held at the city hall on or about the eleventh February, 1854, I was duly appointed and commissioned in these words, to wit: "At a regular meeting of the mayor and council W'm E. Thomas was appointed collector of wharfages for the city of Vicksburg." Signed by J. S. Byrne, mayor.

Answer to cross-interrogatory No. 2. During my administration as

collector of wharfages I kept a daily registry of the landing of boats, and which registry is in my possession, and from which I obtained the number in my answer to interrogatory No. 3, direct examination or examination in-chief.

114 Answer to cross-interrogatory No. 3. The yellow in connection with quarantine was the cause of almost a suspension of business, and rendered the income or revenues from wharfages almost worthless. Few, if any, boats were seen on the river.

Answer to cross-interrogatory No. 4. It would have been diminished considerably. But with the yellow fever prevailing, and consequently the establishing of the quarantine regulations, business was absolutely broken up. The revenue from the few transient boats passing would not have paid the expense of collecting.

Answer to interrogatory No. 5. He did, but with the express declaration and understanding that the time lost by quarantine was to be added to the time specified in the lease to make up the ten full years. Not to my knowledge did the complainant ever waive his right to the full benefit of his lease.

Answer to cross-interrogatory No. 6. As a general thing no flat-boats came to the landing to do business. I cannot state that either the yellow fever or the quarantine, independently of each other, was the cause of the suspension of flat-boats landing, or flat-boat business; but with the fever and necessary quarantine the flat-boat business was worthless.

115 Answer to cross-interrogatory No. 7. He did know of quarantine. He did complain repeatedly to the city council, and always contended that the time lost in the several quarantines refered to, in justice to the spirit and letter of his contract with the city, the full time must be fully made up to him.

WM E. THOMAS. [SEAL.]

Subscribed and sworn to before me, W. P. Cooper, a justice of the peace in and for the county of Washington, and State of Illinois, this 23rd day of October, A. D. 1869.

W. P. COOPER, *Justice.* [SEAL.]

STATE OF ILLINOIS,
County of Washington, ss:

I, T. B. Needles, clerk of the county court in and for said county, do hereby certify that W. P. Cooper, esq'r, whose name is subscribed to the proof or acknowledgement of the annexed instrument in writing, was, at the time of taking such proof or acknowledgement, a justice of the peace in and for said county, duly commissioned, sworn, and acting as such, and authorized to take the same; and further, that I am acquainted with his hand-writing and verily believe that the signature to the said proof or acknowledgement is genuine; and further, that

116 the annexed instrument is executed and acknowledged according to the laws of—

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Nashville, in said county, this 23d day of Oct., A. D. 1869.

[L. S.] T. B. NEEDLES, *Clerk.*

(Endorsed:) N. S. 29. Chan. C. K. Marshall vs. City of Vicksburg. Deposition of W'm E. Thomas.

Filed and opened by me this 27th October, 1869.

GEO. T. SWANN, *Clk.*

Deposition of E. M. Richardson.

Interrogatories to E. M. Richardson, esq:

Interr'y 1st. In what business were you engaged in Vicksburg in 1861 and 1862?

2d. Were you acquainted with the manner of collecting the steamboat wharfages due to C. K. Marshall? and if a blank receipt book was used, describe the book.

3rd. About what number of steamers landed at the wharf after May, 1861, and what proportion of them were in the service or pretended service of the confederate government?

4th. Did or did not nearly all of them, after that date, refuse to pay the usual wharfage on the ground of being in government service?

117 5th. Was or was not the unpaid receipts endorsed—"refused to pay—in gov't service?"

6th. What became of the receipts when payment was refused by the boats?

7th. Were not great quantities of sugar, molasses, and corn, meat, etc., landed on Mr. Marshall's wharf, below the Prentiss House? What proportion of boats landed there?

8th. Were there any flat-boats at the landing in 1861 or 1862; if so, how many?

9th. How many months was business suspended at the wharf and wharfages lost by reason of the prevalence of the yellow fever in any year of your employment on the wharf-boat?

W. YERGER and
MARSHALL AND MILLER,
For Compl't.

Cross-ex. Do you know whether or not Mr. C. K. Marshall, during the prevalence of yellow fever at Vicksburg, Miss., at any time between years 1851 and 1861, consented to the suspension of wharf business and agreed with the mayor and council of V'burg, Miss., that they might establish quarantine near or below the city? State all you know about it.

SIMRALL AND YOUNG,
For Def'ts.

STATE OF LOUISIANA,
City of New Orleans:

118 Be it remembered that on this 11th day of November, A. D. 1869, by virtue of consent of parties, I caused Edward M. Richeson, a person of sound mind and upwards of 43 years of age, to come before me, at my office, No. 30 Camp street, in the city of New Orleans, State of Louisiana, and the said Edward M. Richeson, being by me first duly cautioned, and sworn, and examined, the truth, the whole truth, and nothing but the truth to testify, in answer to the annexed interrogatories and cross-interrogatories, did depose and say:

In answer to interrogatory 1st. I was engaged in the wharf-boat and commission business.

In answer to interrogatory 2nd. I was acquainted with the manner of collecting steamboat wharfages due to C. K. Marshall, and a blank book was used in making out receipts, something of the form of blank check books, with margin to specify the name of boat and remarks, whether or not paid.

In answer to interrogatory 3rd. I do not remember the exact number of boats that landed at the wharf after May, 1861, but a portion of that

year the number was greater than before the war, and the greater portion of them refused to pay wharfage, giving as a reason, that they were in the confederate government service.

In answer to interrogatory 4th. I think they did.

119 In answer to interrogatory 5th. The unpaid receipts were endorsed, "refused to pay—in government service."

In answer to interrogatory 6th. On boats refusing to pay wharfages the receipts were turned over to the city authorities.

In answer to interrogatory 7th. There were great quantities of sugar, molasses, and provisions landed at Mr. Marshall's wharf, below the Prentiss House. I do not remember what proportion of boats landed there.

In answer to interrogatory 8th. There may have been a few flat-boats at the landing early in 1861, but they soon ceased to come at all.

In answer to interrogatory 9th. I don't know.

In answer to cross-interrogatory. I don't know.

And further deponent saith not.

E. M. RICHESON.

Sworn to and subscribed before me, at New Orleans, La., this 11th day of November, 1869.

[L. S.]

GEO. W. CHRISTY,
Commissioner for Mississippi.

STATE OF LOUISIANA,
City of New Orleans:

I, George William Christy, a commissioner for the State of Mississippi, residing in New Orleans, La., duly commissioned and qualified, do hereby certify that I caused to come before me said Edward M. Richeson, at New Orleans, in the State aforesaid, and he being by me first

120 duly cautioned, sworn, and examined to speak the truth, the whole truth, and nothing but the truth, *and nothing but the truth*, in answer to said annexed interrogatories and cross-interrogatories, did give the foregoing deposition. That the answers of said Edw. M. Richeson were by me reduced to writing by said deponent, and by me carefully read to and understood by said deponent, as his deposition in the matter; that he signed the same as his deposition in my presence; that the questions propounded to said deponent and to which he has answered are the direct and cross-interrogatories annexed; that said deposition has in no manner been changed or altered since the same was subscribed by said deponent, but that the same has remained in my possession up to the time of sealing and delivering the same to the post office, directed to Judge Hill, U. S. district court, Jackson, Miss.

In witness whereof I have hereunto set my hand and affixed my official seal on this 11th day of November, A. D. 1869.

[L. S.]

GEO. W. CHRISTY,
Commissioner for Mississippi.

(Endorsed:) N. S. 29. Chan. C. K. Marshall vs. City of Vicksburg. Deposition of E. M. Richeson.

Filed Nov. 12th, 1869, in envelope to "Hon. Judge Hill."

GEO. T. SWANN, *Clk.*

121 In cir. court of U. States for southern district of Mississippi.

Deposition of James Hazlitt.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Inter's for compl't to Ja's Hazlitt:

State your name and occupation.

1. Do you know of the flat-boats paying a double wharfage—one to C. K. Marshall and one to the city council by their collectors and agents? If so, what was that extra charge; how much? Did you ever pay it yourself?

2. Do you know of a quarantine in the city of Vicksburg in 1853, and if so, how long did it last and how long did the epidemic cause the suspension of business?

3. Do rules and regulations of quarantine apply to all boats and water craft, whether ascending or descending the river?

4. Was or was not commercial business and shipping and receiving freight by steamers nearly suspended in 1854, and also in 1855, and how long?

5th. Do you know the boundaries where the wharf-boat is required to lie, by the terms of the contract between C. K. Marshall and the city council; and state if it now lies there, or has so laid since the end of the war?

T. A. MARSHALL,
Att'y for Compl't.

122 Cross-interrogatories to Ja's Hazlitt:

X-int. 1. Did not flat-boats pay the city a tax of one dollar or some other amount for privilege of selling goods, and was not this the only tax they paid the city, and did this tax interfere with Marshall's wharfage tax?

X-2. Did not C. K. Marshall petition mayor and council, in 1853, to establish a quarantine? Did not boats land at quarantine station, and was not wharfage there collected of them? Was not Marshall's collectors all the time on duty during quarantines? Did not the packet boats in Vicksburg trade, run during quarantines as before and after it, making their usual trips, and did not all boats having business land during quarantines, as before and after them?

SIMRALL AND YOUNG,
Sol's for Def't.

In the U. S. circuit for the south. dis't of Miss'i.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

Deposition of JAMES HAZELETT, a witness for the compl't in the above-named cause, taken before Laz. Lindsay, commissioner for the U. S. cir. court for said district, at his office in Vicksburg, Miss'i, by

123 agreement of counsel, and on the interrogatories and cross-interrogatories annexed hereto.

Deponent being produced, sworn, and examined by me, answers as follows:

My name is James Hazelett. I am a merchant.

Ans. to 1st. I frequently paid for my own boat a dollar for an extra wharfage, besides paying regular wharfage to C. K. Marshall's agent.

Ans. to 2d. A quarantine was established by the city of Vicksburg in 1853, and it lasted about three months.

Ans. to 3rd. I so understood the rules of quarantine for 1853.

Ans. to 4th. Business was generally suspended in these years, but not to the same extent that it was in 1853.

Ans. to 5th. I do not know the boundaries where the wharf-boat is required to lie by the contract. The wharf-boat now lies between Clay and South streets, and has done so nearly all the time since 1865.

JAMES HAZELETT.

Cross-examination of James Hazelett:

Ans. to 1st-x. That boats paid the same city tax that other merchants did on goods, and paid a dollar extra for landing besides.

Ans. to 2nd-x. I know nothing of the matters in these inter-
124 rogatories. The packets were not allowed to land in the city. I recollect that some of the packets came up above the quarantine landing, but were not allowed to come within the city limits.

JAMES HAZELETT.

I, Lazarus Lindsay, U. S. com'r as aforesaid, do hereby certify that James Hazelett, whose signature appears to the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the interrogatories and cross-interrogatories hereto annexed, and that his answers thereto were reduced to writing and signed by him in my presence at Vicksburg, Miss'i, this 15th day of Nov., 1869.

LAZ. LINDSAY,
U. S. Com'r.

Com'r's fee, $5 00.

Endorsed: C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. 29. Deposition of James Hazelett for complainant.

Filed and opened in court Nov. 17th, 1869.

GEO. T. SWANN, *Clk.*

In cir. court of U. States for southern district of Mississippi.

Deposition of Thomas Metzler.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Inter'ys for complainant to Capt. Metzler:

125 State your name and occupation, and how long you have followed that business.

1. State how many trips the Yazoo packets have made per week

between the years 1851 and 1861? How many boats made over one trip per week and under three; and state what you know of the number of trips per week any boats made to any port in the Yazoo or any of its tributaries; if more than one per week?

2. What amount of wharfage was usually paid up to 1861 by the Yazoo packets? Was it by the week or by the trip?

T. A. MARSHALL,
Att'y for Compl't.

Cross-interrogatories to Capt. Metzler:

Int. 1-x. Can you state the number of packets in Yazoo River and Vicksburg trade, each year from 1851 to 1861; if you can do so, did the same packets in number run all the year round or only during the cotton season?

Int. x-2. Were there as many packets in this trade in the summer and spring as during the following winter?

SIMRALL AND YOUNG,
For Def't.

In the cir. court of the U. S. for south. dis't of Miss'i.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

126 The deposition of THOMAS METZLER, a witness for the compl't in the above cause, taken before Laz. Lindsay, U. S. com'r for said district, at his office in the city of Vicksburg, by agreement of parties, and on the interrogatories and cross-interrogatories hereto annexed.

The said witness being produced, sworn, and examined, deposes and says in answer to said questions:

Ans. to 1st. My name is Thomas Metzler; am a steamboatman, and have followed that business about 30 years.

Ans. to 2d. The Yazoo City packets during that time have generally made three trips per week. Sometimes from two to four boats made one or more trips per week to Yazoo City and above.

Ans. to 3d. They paid generally five dollars per week.

Cross-examination.

Ans. to 1st-x. I cannot state correctly from memory, and don't know that I could from figuring up. From Sept'r to June, I think there were from two to four per week, and the balance of the year from one to two per week.

Ans. to 2d-x. I have just stated what I know on that subject.

THOMAS METZLER.

I, Lazarus Lindsay, U. S. com'r as aforesaid, do hereby certify that Thomas Metzler, who signed the foregoing deposition, was by me
127 first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the interrogatories and cross-interrogatories hereto annexed, in the cause aforesaid, and that said deposition was reduced to writing and signed by him in my presence on the 13th day of Nov., 1869.

LAZ. LINDSAY,
U. S. Com'r.

Com'r's fee, $5 00.

Endorsed: 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of Tho's Metzler, for compl't.

Filed and opened in court Nov. 17th, 1869.

GEO. T. SWANN, *Clk.*

Deposition of B. J. Butler.

Interrogatories to B. J. Butler, esq'r:

Interog. 1st. In what business were you employed in Vicksburg in 1859, 1860, and 1861?

2d. What were your opportunities of knowing the general steam and flat-boat business there from 1851 to 1861?

3rd. Do you know of the establishment of quarantines by the mayor and council for the protection of the city against the prevalence of the yellow fever? In what years? Were steamers prevented from landing at the wharf?

4th. After the plague subsided how long was it before steamers began to land again at the city wharf?

128 5th. What amount of time was generally lost from collections of wharfages when yellow fever prevailed? State time and years as far as you know.

6th. Did you, or did you not, ever hear C. K. Marshall say the city owed him considerable money for lost time before the war, which they would be required to make up to him when ten years expired for his possession, according to their contract with him?

7th. About what number of flat-boats did business before the war, from 1851 up to 1860?

8th. After the war begun, in April, 1861, did or did not the large majority of steamers refuse to pay wharfage on the ground of being in the confederate government service?

W. YERGER and
MARSHALL AND MILLER,
For Compl't.

Cross-ex. 1st. Did you derive what you have stated from Mr. C. K. Marshall?

Cross-ex. 2. Do you know whether or not C. K. Marshall, at any time between years 1851 and 1861, consented to establishment, by mayor and council of V'burg, Miss., of quarantine, below or near the city of V'burg? State all you know on this point.

(6th question of compl'ts objected to.)

SIMRALL AND YOUNG, *For Def't.*

129 U. S. OF AMERICA,

State of Mississippi, County of Warren, City of Vicksburg, ss:

Deposition of B. J. BUTLER, a witness for the complainant in a case pending in the U. S. circuit court for the southern dist. of Miss., wherein C. K. Marshall is compl't and The Mayor and Council of the City of Vicksburg are def'ts, (on the equity side of said court,) taken by consent of parties, and on the interrogatories and cross-interrogatories hereto annexed, before me, Lazarus Lindsay, commissioner for said U. S. court.

The said witness being produced to me, and by me first legally sworn and examined, deposeth and saith, in answer to said interrogatories and cross-interrogatories, as follows:

Ans. to 1st. As proprietor of the wharf-boat at the city of Vicksburg, Mississippi.

Ans. to 2d. From the fact that my business was on the landing daily, and often in the night.

Ans. to 3rd. Yes; I know of the existence of quarantine as asked. I think the mayor and council of the city of Vicksburg established quarantine the city in the years 1853 and 1855, and steamers were prevented from landing at the wharf during its existence.

Ans. to 4th. The regular packets commenced immediately; the irregular or transient boats did not for some weeks afterwards.

130 Ans. to 5th. I think in 1853 and 1855; some three or four months were lost in each of those years.

Ans. to 6th. I have heard him say so frequently.

Ans. to 7th. From 500 to one thousand per year.

Ans. to 8th. Yes, they did.

Cross-examination.

Ans. to 1st-x. I did not.

Ans. to 2d-x. I know nothing in reply to this question, except from hearsay.

B. J. BUTLER.

I, Lazarus Lindsay, U. S. commissioner as aforesaid, do hereby certify that Baxter J. Butler, the witness named in the caption hereof, was by me sworn to speak the truth, the whole truth, and nothing but the truth, in reply to said interrogatories and cross-interrogatories, and that his deposition was reduced to writing by me in his presence, and signed by him in my presence, on the 3rd day of November, 1869, at my office, in the city of Vicksburg, county of Warren, and State of Mississippi.

LAZ. LINDSAY,
U. S. Commissioner.

Endorsed: 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of B. J. Butler, for pl'ff.

Filed and opened in court Nov. 17th, 1869.

GEO. T. SWANN, *Clk.*

131 Deposition of Jno. Hartigan, in cir. court of U. States for southern dist. of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Inter'ys for complainant to John Hartigan:

State your name and business.

1. Were you engaged in the wharf-boat business in 1861 and 1862; and if so, in what capacity? Can you state what proportion of steamers then plying in the river and landing at Vicksburg were employed in the confederate gov't service; and did not many of them land below the Prentiss House, where they paid no wharfage?

2. Was there kept and used on the boat a blank book for wharf purposes; and if, describe it, and to whom it belonged? Was it customary to fill out the blank receipts, insert the am't in the margin, and then cut them out for presentation? When not paid what became of them? Did Mr. Watt and Mr. Auter use the same book when they took charge of the city business, as wharf collectors, in 1862? How were such receipts endorsed when not paid? Was it the purpose to keep the unpaid receipts

endorsed as not paid by government boats, as vouchers against
132 the quartermasters of the Confederate States army and navy? Do you know? if so, state.

3. Would the wharf collections from May, 1861, to May, 1862, compensate a clerk for the time and expense of collecting? State the kind of currency the wharfage was paid in, and its gold value.

4. Can you state what is the present boundary within which the wharf-boat lies, and if it is the same as when you conducted or aided in conducting business on it; and state what were the names of the streets between which the wharf-boat laid when you were on it.

5th. Were you engaged in the business in 1861 on your own account, or for another; and if so, tell for whom.

T. A. MARSHALL,
Att'y for Compl't.

Cross-interr'y to J. Hartigan, for def't.

X-int. 1. Did not Mr. Marshall have a collector of wharfage in 1861, and part of 1862; or did not some person purport to collect for him the wharfage? Did not boats pay wharfage as usual in 1861 and 1862, until the blockade of the river above Vicksburg, in 1862? If boats in the employment of the confederate government landed, did they pay wharfage, or give orders or vouchers for same on quartermasters?

133 X-int. 2. Can you state the amount of wharfage collected in 1861 and 1862? Was there not an unusually active boat business done at Vicksburg in 1861? Did not as many boats land at Vicksburg in 1861 as in 1862? Did more land in 1861?

SIMRALL AND YOUNG.

In the U. S. cir. court for south. dist. of Miss.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

Deposition of JNO. HARTIGAN, a witness for complainant in the above case, taken before Laz. Lindsay, U. S. com'r for the southern dist. of Miss., at his office, in Vicksburg, Miss., by agreement of counsel for the parties, and on the interrogatories and cross-interrogatories hereto annexed.

Said witness being produced, sworn, and examined, answers as follows:

My name is John Hartigan. I am a merchant.

Ans. to 1st. I was a clerk on the wharf-boat in 1861, and was interested in 1862. Cannot say what proportion of steamers were in the confederate service, as I was absent from about the middle of September, 1861, to the latter part of Dec'r, 1861. Some boats landed below the
134 Prentiss House, but not many. Cannot say whether they paid wharfage or not, as I did not have to make settlement with them.

Ans. to 2nd. There was a book kept on the wharf-boat like a bank check-book. It belonged to C. K. Marshall. It was customary to use them in that way. When not paid, there was written across the face of them: "Boat in government service," and returned to C. K. Marshall, or his agent. I do not think Mr. Watt and Mr. Auter used the same book. When not collected, the receipts were returned to Mr. Marshall, as stated above, to be held or not against the government as he pleased.

Ans. to 3rd. I think a clerk would have been compensated for the time and expense of collecting. There was a mixed currency in circulation. It was not much depreciated at that time; but cannot state exactly its gold value.

Ans. to 4th. The wharf-boat laid between Clay and China streets when I was on it. One wharf-boat now lies at the same place, and another between Clay and Crawford streets.

Ans. to 5th. I was engaged with B. J. Butler.

JNO. HARTIGAN.

Cross-examination of John Hartigan:

135 Ans. to 1st x. Mr. Marshall had a collector in 1861, while I was on the wharf-boat. I cannot answer as to 1862; but think he had. My recollection is that boats in government service did not pay or give vouchers; but I was not the party who settled with them.

Ans. to 2nd x. Cannot say what amount of wharfage was collected in 1861 and 1862. There was an active boat business in 1861. I believe as many boats landed in 1861 as in 1860. Cannot say whether more landed or not.

JNO. HARTIGAN.

I, Lazarus Lindsay, commissioner of the U. S. cir. court as aforesaid, do hereby certify that John Hartigan, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the int'ys and cross-int'ys hereto annexed, and that said answers were reduced to writing and signed by him in my presence at my office in Vicksburg, Miss., this 16th Nov., 1869.

LAZ. LINDSAY.

Endorsed: 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Depo. of John Hartigan for compl't.

Filed and opened in court Nov. 17th, 1869.

G. T. SWANN, *Clk.*

136 *Deposition of Sam'l W. Brown.*

In cir. court of U. States for southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Inter'ys for compl't to S. W. Brown:

Interrogatories on behalf of complainant to SAM. W. BROWN, which, with any cross-interrogatories, may be answered before any U. States cir. court com'r. Notice and other formalities waived.

1. State whether you were ever collector and assessor of taxes for the city of Vicksburg. If so, state in what years and how long you held such position, and state whether during the whole time of your service the landing and commons were assessed as private property, and whether it was sold when taxes were not paid thereon just as other property of individuals was sold.

2. State how long you have resided in the city, and whether the city ever had any possession of the wharf or landing during your residence

here prior to the war, and whether it was not always recognized and treated by the city as private property from the time you came to the city until the contract was made between the city and Mr. Marshall.

137 W. YERGER and
MARSHALL AND MILLER,
For Compl't.

Cross interrogatories for Sam'l W. Brown for def'ts:

X-int. 1. Did not the city claim title to the commons and landing, under a dedication thereof to public uses by Vick, former owner?

X-int. 2d. Was not the city of Vicksburg asserting title and claim thereto at the time of the compromise with Marshall, and was not such assertion of title being made by the city in U. States cir. court?

SIMRALL AND YOUNG.

Answer to interrogatories propounded to Sam'l W. Brown by complainant's counsel:

Answer to 1st int. I was assessor and collector of taxes of the city of Vicksburg from 1842 to 1849, and during that time the landing and commons were assessed as private property, and when taxes were not paid thereon it was sold as other private property.

Answer to 2nd int. I have resided here about thirty-two years, with the exception of three or four years' residence in New Orleans. Up to the time I left here for New Orleans, in 1850, the city never had any possession of the wharf. The landing was considered as private property.

SAM'L W. BROWN.

138 Answers to cross-interrogatories by Sam'l W. Brown:

X-int. 1st answer. I do not know.

X-int. 2d answer. At the time of the compromise with Marshall I was not residing in Vicksburg, and had no means of knowing anything about the title and claims the city were asserting.

SAM'L W. BROWN.

STATE OF MISSISSIPPI,
County of Warren, City of Vicksburg:

I, Lazarus Lindsay, commissioner for the U. S. cir. court for the southern district of Mississippi, do hereby certify that Sam'l W. Brown, who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth and nothing but the truth, in reply to the interrogatories and cross-interrogatories hereto annexed in the cause aforesaid, and that said deposition was reduced to writing and signed by him in my presence, at my office in the said city of Vicksburg, this 13th Nov., 1869.

LAZ. LINDSAY,
U. S. Com'r.

Endorsed: 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of Sam'l W. Brown for compl't.

Filed and opened in court Nov. 17th, 1869.

GEO. T. SWANN, *Clk.*

139 *Deposition of W. D. Wilson.*

In cir. court of U. States for southern dist. of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Inter'ys to W. D. WILSON for compl't :

State your name and occupation.

1. Were you a member of the city council in 1862? State when the last meeting in that year was held, and why it was the last, if so; if not, when did other councils assemble? What was done at the meeting you last attended? Did you ever hear of a council meeting after the month of June in that year? Who were the members of the council?

2. Did you know anything of the contract called the "compromise," made in 1851 by and between the city council and C. K. Marshall? Did you, as a councilman, regard the claims of Marshall for lost time on his contracts and by the war as fair and just, and did you ever know
140 that said Marshall intended to seek redress in the courts for damages if the council refused to pay him?

3. Do you know if the city council had an extra dollar wharfage fee collected from flat-boats for its own use, over and above the wharfage paid and collected by the agent of C. K. Marshall? State what opportunity you had of knowing.

4. Do you know of ordinances passed by council in 1852, regulating the taxes and fees to be paid, and if it was or was not the general understanding among the merchants that said ordinance would and ought to drive all trading boats from the wharf, and what effect was it likely to have upon the income of Marshall as agreed on in the contract with the city?

T. A. MARSHALL,
Att'y for Compl't.

Cross-interrogatories.

Int. 1st. Before answering as to the number of times the city council met, state whether you answer from memory, or from recent examination of the minutes of the council.

141 Int. 2. If in answer to the second interrogatory you say you think the claim of Mr. Marshall for lost time on account of the war is fair, &c., state fully the grounds and reasons for your opinion. State whether you consider the city of Vicksburg responsible for the losses of property and income of property holders and business men in her corporate limits, on account of the blockade of the river, and other belligerant acts?

Int. x-3. If you have any knowledge about a fee on flat-boats collected by the city, in addition to the wharfage by Marshall's agent, state whether or not this fee was or was not for the privilege of selling goods, produce, from the flat-boats? Did the city, in your knowledge, ever collect any other tax whilst Marshall's term lasted, than a tax or fee for privilege of selling from the boats?

Int. x-4. Did not the use of flat-boats on the Mississippi greatly fall off for several years before the war, and the landing of such boats fall off at Vicksburg, and other points and towns; and how is it since the war?

Int. x-5. Has the falling off in the flat-boat business on the Mississippi been greater at Vicksburg, relatively, than at other points;

142 and is it or not the fact, that the steamboats have, for the last years, been gradually superseding the flat-boats?

SIMRALL AND YOUNG,
For Def't.

My name is W. D. Wilson, and a merchant. I was a member of the city council in 1862. The last meeting of the board of councilmen for that year, as far as I know, was held the last of May or early in June. There was , and the records of the council were turned over to the mayor to be sent into the country for safe-keeping. Those books and records, as I was informed, were sent away after about the middle of June, and I never knew of any meeting in that year after they were so sent off. The failure to hold meetings arose from the fact that the war disturbed all our city arrangements. At the last meeting arrangements were made to remove indigent families out of the city, as we apprehended a bombardment. I recollect no other meeting of the board afterwards. Messrs. Auter, Moore, Wilson, Smedes, were members, and, I think, Mr. Bender, and I forget any other names. I don't call to mind any knowledge of the contract between the city and Mr. Marshall.

143 I have often heard Mr. Marshall say, in years past, and prior to the war, that he intended to sue the city for damages, unless he got a fair settlement, as Mr. Marshall had sold the city a valuable piece of property; the city contracted in writing to pay for it. I have always considered it fair and just for the city to comply strictly with that agreement. I do not know for whose benefit the dollar wharfage was collected, but know of the city collecting one dollar landing fee from boats. The ordinance passed in 1852 to increase the wharf, and ad valoram tax on flat-boats was collected, and had the effect to drive flat-boats away, as boats ceased landing in numbers as large as before. It made the income less.

Answer to cross-interrogatories.

Having never seen or heard of the city records since they were sent away for safe-keeping in June, of 1862, I can only answer from memory.

If the city agreed to make up for lost time, and time was lost by the war, I regard the city as responsible as for her contract; because the city obligated herself in good faith.

I do not consider the city authorities responsible for the losses of property, or income of business men by the blockade on the river, or any belligerant act, in the absence of a binding contract to that effect.

144 3d. Cannot answer third interrogatory positively.

4th. Flat-boats fell off very considerably before the war. Very few boats landed since the war.

5th cross. The flat-boats fell off till nearly all cease to come there now.

W. D. WILSON.

U. S. OF AMERICA,
State of Miss., South. Dis't, City of Vicksburg:

I, Laz. Lindsay, com'r of the U. S. cir. court for said dis't and State, do hereby certify that the foregoing interrogatories and cross-interrogatories, and the answers thereto, were produced to me in my office in said city, on the 15th day of Nov'r, 1869, and the said answers were sworn to by the said witness, and signed by him in my presence.

LAZ. LINDSAY,
U. S. Com'r.

Filed and opened in court Nov. 17th, 1869.

GEO. T. SWANN, *Clk.*

Deposition of Benj. Springer.

Interrogatories to Hon. Benj. Springer:

Inter'y 1st. How long have you resided in Vicksburg, and what has been your business?

145 2nd. Have you been acquainted with the business of the wharf and with the flat-boat business?

3d. What has been the average number of flat boats landing at Vicksburg, yearly, since 1851 to the year 1861?

4th. Can you tell how long the wharf business was suspended during any of the epidemics prevalent in the city, from 1851 to 1861?

5th. What was the value of the wharf property ceded to the city in 1852 by C. K. Marshall, known as the commons, extending from South street to northern boundary of the city?

W. YERGER and
MARSHALL AND MILLER,
For Compl't.

Cross-ex. 1st. Do you know whether or not Mr. Marshall, the complainant, consented to the suspension of the wharf business during the prevalence of epidemics at Vicksburg, Miss., between years 1851 and 1861? State all you know on this point fully.

SIMRALL AND YOUNG,
Att'ys for Def't.

We agree that answers (sworn) to the foregoing interrogatories and cross-interrogatories, taken before any officer authorized to administer an oath, may be read in evidence in the case of C. K. Marshall vs. City of Vicksburg, now pending in U. S. circuit court at Jackson, Miss., said interrogatories and cross-interrogatories, and the answers thereto,

146 to be subject to the rules of competency, and the rules of evidence.

C. K. MARSHALL,
SIMRALL AND YOUNG,
For Def't.

UNITED STATES OF AMERICA,
Southern Dist. of Miss., City of Vicksburg, ss:

Deposition of BENJ. SPRINGER, taken by consent of parties, before Lazarus Lindsay, U. S. com'r for said district and State, at his office in the city of Vicksburg, county of Warren, and State of Mississippi, to be used as evidence on the part of the complainant in a case pending in the U. S. cir. court for the southern district of Miss., wherein Cha's K. Marshall is compl't and the Mayor and Council of the City of Vicksburg are defendants.

The witness being duly sworn according to law, deposes and says, in answer to the int'ys and cross-int'ys hereto annexed, as follows:

Ans. to 1st. Between 45 and 46 years; have been merchant, hotel-keeper, and in various other employments.

Ans to 2d. Many years ago I was well acquainted with that business, having at one time been the collector of wharfage; but my recollection now is not very distinct.

147 Ans. to 3d. In answering this question I am very much at a loss, but from my best recollection, I think there were probably an average of from four to five hundred per year.

Ans. to 4th. I cannot but believe that in the years 1853, 1854, 1855,

and 1858, the time would average about two and one-half to three months in each year.

Ans. to 5th. Had it been my property, free from incumbrance, I would not have taken less than two hundred and fifty thousand dollars for it.

B. SPRINGER.

Cross-examination of B. Springer.

Answer to 1st x. I do not, but supposed that Mr. Marshall did consent, upon condition, or with the expection that the time lost should be made up to him. I have no doubt public opinion would have forced him to have done this. I know nothing further.

B. SPRINGER.

I, Laz. Lindsay, U. S. commissioner as aforesaid, do hereby certify, that Benjamin Springer, the witness who signed the above deposition, was by me first duly and legally sworn to speak the whole truth of his knowledge touching the matters in controversy in the cause aforesaid, and that said deposition was reduced to writing and signed by
148 him in my presence, on the 12th day of Nov., 1869, at my office in the city of Vicksburg, Miss'i.

LAZ. LINDSAY,
U. S. Com'r.

Endorsed: 29. C. K. Marshall vs. Mayor and Council of the City of Vicksburg. Deposition of Benj. Springer for plaintiff.

Filed and opened in court Nov. 17th, 1869.

GEO. T. SWANN, *Clk.*

Deposition of S. H. Parisot.

In circuit court of U. States for southern dist. of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

State your name and occupation, and how long you have been engaged therein.

1. Can you state the number of steamers running from Vicksburg to any port on the Yazoo, or its tributaries, during the years of 1851 to 1861, inclusive, that made more than one trip per week?

Q. State what amount of wharfage was usually paid per trip or week by the Yazoo packets.

MILLER AND MARSHALL,
For Compl't.

Cross-interrogatories.

149 1 x-int. Did the same number of boats run in the Vicksburg trade summer, fall, and winter, all the year during the time enquired about? State, specifically, the number of boats in Vicksburg and Yazoo trade during the years enquired about, and for each season of the years.

SIMRALL AND YOUNG,
For Def't.

In the U. S. cir. court for the south. dist. of Mississippi.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

The deposition of Capt. S. H. PARISOT, a witness on behalf of the compl't in the above-named cause, taken by agreement of counsel before Laz. Lindsay, U. S. com. for said court, in Vicksburg, Miss., and on the interrogatories and cross-interrogatories hereto annexed.

The witness being produced, sworn, and examined, deposes and says:

Answers of Capt. S. H. Parisot to direct interrogatories.

My name is S. H. Parisot; occupation, steamboat captain, and have been so engaged for 22 years.

1st. One boat made three trips per week during all this time, and another boat two trips per week during a portion of the time in the summer months.

Ans. to 2. I believe the wharfage was $5 00 per week.

S. H. PARISOT.

150 1st x-inter'y. I think the answers to the direct interrogatories answers this in full.

S. H. PARISOT.

I, Laz. Lindsay, U. S. com'r as aforesaid, do hereby certify, that S. H. Parisot, the witness who signed the above deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the inty's and cross-inty's hereto annexed, and that the same were reduced to writing and signed by him in my presence, at my office in Vicksburg, Miss., this 6th day of Dec'r, 1869.

LAZ. LINDSAY,
U. S. Com'r.

Filed Dec'r 13th, 1869.

GEO. T. SWANN, *Clk.*

Opened by me Dec. 13, '69.

GEO. T. SWANN, *Clk.*

Deposition of H. Shannon.

In circuit court of United States, southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Interrogatories in behalf of complainant in the above case, to be answered by Harvey Shannon, before any com'r of the U. S. cir. court; also any cross-interrogatories put, without further notice. Forms
151 waived.

Int. 1. What is your age, residence, and occupation?

Int. 2. How long have you resided in the city of Vicksburg?

Int. 3. Are you familiar with the contract between C. K. Marshall and the mayor and city council, called the compromise, made in 1851 and 1852? If so, state if you know whether or not the city authorities have observed their contract so made.

Int. 4. Are you familiar with the facts respecting *respecting* the quarantining of the city of Vicksburg during the years of 1853, 1854, 1855, and 1858, or any one of them; and how long did they cause the suspension of commerce, trade, and river navigation?

Int. 5. Do you know where C. K. Marshall has claimed and held his citizenship during the three past years, and what evidence have you of his non-residence in the State of Mississippi of late years? Has the fact of his citizenship in Louisiana been known to the public, as far as you know?

W. YERGER,
MILLER AND MARSHALL,
For Compl'ts.

Cross-interrogatories for Harvey Shannon for def't.

X-int. 1st. Did the quarantines suspend navigation, trade, and commerce at all; or did the quarantine regulations only change the
152 place of steamboat landing?

X-int. 2d. Can you state that a single boat during the quarantines would have landed at the city landings that did not land at quarantine station?

X-int. 3d. Was not yellow fever at New Orleans and the river towns below Vicksburg during the prevalence of it at Vicksburg; and if there was dulness in boating and trade during the quarantines, was not that in part attributable to the epidemic, yellow fever, at other towns on the river, especially New Orleans?

X-int. 4. Did not C. K. Marshall encourage and approve these quarantines, sign petitions for their establishment? Have you not heard him say so?

SIMRALL AND YOUNG,
Sol's for Def't.

Exhibits in deposition of H. Shannon.

DR. MARSHALL DECLINES.

The many friends of Dr. C. K. Marshall will regret to know that he cannot serve as commissioner of immigration. While we lose Dr. Marshall as commissioner, it is a source of gratification to know that his influence and energy will be given to this new project, upon the success of which depends the salvation of our people. The following let-
153 ter has been received from him on the subject:

VICKSBURG, *May* 14th, 1868.

Editor Vicksburg Times:

DEAR SIR: I regret to see that the democratic convention placed my name before the good people of this State for the office of "commissioner of immigration." I had requested a member of the convention, in case my name came up, as it had been suggested it might, in connection with some office, to state positively that I could not consent to serve—that I wanted no office. Now I am compelled to disappoint my friends, and give the executive committee the trouble of putting another name in the place of mine. There are two reasons for this course on my part. In the first place, I do not deem a political office compatible with the

higher duties and obligations I have chosen to perform, as long as it is possible to find citizens competent to fill such a place. I am ready, and willing, without compensation, to do any and everything outside of the arena of political strife to build up the prosperity and promote the tranquility of the people. Candidates must be more or less politicians; I cannot be.

In the next place, it is quite out of the question, as I am not
154 now a citizen of Mississippi. Some time since, I removed my citizenship to Louisiana, and regard myself as a visitor here; and shall be gone in a short time. I design at a future day returning to this State, and expect to live and labor and die upon its soil.

As to immigration it is the material salvation of the State, and without it the land is doomed; desolation, beggary, and ruin must follow.

Outside of any office, I will do as much as if I were its elected occupant, when I can consistently with other duties serve that cause. I beg to offer to the members of the democratic convention my sincere thanks for the compliment bestowed by tendering me the chance for the office.

Respectfully,

C. K. MARSHALL.

In the circuit court of the United States, southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSBURG. } In equity.

The deposition of HARVEY SHANNON, a witness for complainant in the above-named cause, taken before me, Laz. Lindsay, a commissioner for said court, at my office, in the city of Vicksburg, State of Mississippi, by consent of parties, and on the interrogatories and
155 cross-interrogatories hereto annexed.

Said witness, Harvey Shannon, being produced, sworn according to law, and examined, answers as follows:

To the first he saith, that he is thirty-eight years of age; his residence is Vicksburg, Mississippi; and by occupation he is a practising physician.

To the second interrogatory he saith, that he has resided in the city of Vicksburg nearly twelve years.

To the third interrogatory he saith that he is not.

To the fourth interrogatory he saith that he is not.

To the fifth interrogatory he saith: About two years since I heard C. K. Marshall say that he had removed his citizenship to New Orleans, in the State of Louisiana. I also heard from other sources, about the same time, that he had done so. I have seen two letters-patent in his possession issued by the Patent Office, at Washington, D. C., to "C. K. Marshall, of New Orleans."

On the 15th of May, 1868, a communication from C. K. Marshall, addressed to the "Editor Vicksburg Times," was published in that
156 paper. In this communication, a copy of which accompanys this deposition, Mr. Marshall stated that his citizenship had been removed to Louisiana. At the time this publication was made in May, 1868, I was proprietor of said paper.

To the first cross-interrogatory he saith, that he, said witness, did not become a citizen of Vicksburg until 1858; and that he is not sufficiently familiar with the quarantine regulations in force during the years 1853, 1854, 1855, and 1858, and their operation upon commerce, to give an intelligent answer.

To the second cross-interrogatory he saith, that he does not know.

To the third cross-interrogatory he saith, that his recollection is that yellow fever was prevailing at New Orleans, and at some of the river towns below Vicksburg, in 1858, and during its prevalence here in that year. He does not know what effect it had upon trade and river commerce.

To the fourth cross-interrogatory he saith, that he did not know Mr. Marshall prior to 1858, and he does not remember to have had any conversation with him during the year 1858, relative to the questions
157 propounded in this cross-interrogatory. Of late years I have heard Mr. Marshall say that he is in favor of quarantines.

H. SHANNON.

I, Lazarus Lindsay, U. S. com'r, as atoresaid do hereby certify that Harvey Shannon, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to said int'ys and cross-int'ys, and that the same was signed by him in my presence, on the 10th day of Dec'r, 1869.

LAZ. LINDSAY,
U. S. Com'r.

Filed 13 Dec., 1869.

GEO. T. SWANN, *Clk.*

Opened by me Dec. 13, '69.

GEO. T. SWANN, *Clk.*

Deposition of Marmaduke Shannon.

In cir. court of U. States for southern dist. of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Int'ys to M. Shannon for complainant.

Give your name.

1. Can and will you furnish a statement, as published officially
158 by you in the Vicksburg Whig, of scrip or money that was paid in 1852 or 1853 to C. K. Marshall, for and in consideration of his compromise or sale of the wharf and landing generally known as the "commons," and what am't, if any, so paid. Did you ever know of any money paid to said Marshall, or does the annual reports of the mayors of the city show any account of any funds paid to W. S. Bodley for his titles or interest in the commons, as a mode of relieving and aiding the said Marshall.

2. Have you ever heard the complainant in this suit say he intended to seek indemnity for his lost time, arising from quarantines and the war previous to the year 1863 and 1865?

3. Have you or not always understood that when quarantines were established it applied alike to steamers passing down as well as up? Did not the yellow fever originate here in 1858 from a case landed from a steamer descending the Miss. River?

4. Did, or did not, C. K. Marshall, in 1852, notify the mayor and council, that as one of the conditions of the compromise, so called, required the wharf boat to be kept between China and Clay streets.
159 and it having been removed out of said limits, he would sue the city for the recovery of the property, if they did not order its instant restoration; and what was the result of the petition?

5. State whether or not this threat did not lead the city council afterwards, when they desired to remove the wharf-boat for quarantine purposes, to apply to Mr. Marshall for a written permission, in order that the contract might not be violated? State what you know on the subject.

T. A. MARSHALL,
Att'y for Compl't.

Cross-int. to M. Shannon, by def't's sol's.

The def't excepts to second interr'y, as illegal, intending to elicit the statements of compl't.

Int. 1. State fully your knowledge of the facts, enquired about in fifth interrogatory, and whether wharfage was not collected at the wharf-boats at the quarantine station by Mr. Marshall's collector?

Int. 2. Did not quarantines exist, on account of yellow fever, in dull seasons of steamboating? Did the quarantine diminish the landing of boats, or was it the existence of the epidemic that produced the effect, if it was produced at all?

SIMRALL AND YOUNG,
Sol's for def't.

In the circuit court of the United States for the southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

160 Deposition of MARMADUKE SHANNON, a witness in the above case, taken before Giles M. Hillyer, a commissioner for said court, at his office in the city of Vicksburg, State of Mississippi, by consent of parties, and on the interrogatories and cross-interrogatories hereto annexed.

Said witness being produced, sworn according to law, and examined, answers as follows:

To the first interrogatory he saith: In the annual report of the finances of the city of Vicksburg, dated March 17, 1853, and published in the Vicksburg Whig of March 19, 1853, I find "Special warrants issued to C. K. Marshall, paid ($1,000) one thousand dollars." In the report of the city finances, dated March 12, 1852, and published in the Vicksburg Whig on the following morning, there is no mention of any money being paid to C. K. Marshall. I do not know of any money ever having been paid to W. S. Bodley by the city of Vicksburg, for the purposes mentioned in said interrogatory.

To the second interrogatory he saith: I do not recollect to have ever heard complainant, previous to the year 1865, say that he intended to seek indemnity for his lost time, arising from quarantines and the war.

To the third interrogatory he saith: My recollection is that the
161 quarantines established at Vicksburg only applied to boats as-

cending the river. I do not know from whom, or from what cause, the yellow fever originated here in 1858.

To the fourth interrogatory he saith: I find the following note from C. K. Marshall to the mayor and council of the city of Vicksburg, and published in the Vicksburg Whig, in the council proceedings of the 1st of March, 1852:

"I will agree that the space of fifty feet shall be added on the north and the same space on the south of the steamboat-landing, between China and Clay streets, for the sole purpose of accommodating packets in receiving and discharging freights, and flat-boats shall not for any purpose intrude within those above specified limits; but for no condition can I consent that the wharf-boat shall be either above or below the limits contracted for in my lease to Mr. Porterfield, and if the city council shall allow said boat to pass its proper limits, I shall deem it a violation of the existing contracts, and forthwith proceed to re-assert my own claims and ownership in the wharf and landing.

"Respectfully yours,

"C. K. MARSHALL."

162 Immediately following the above, in the council proceedings as published, is a resolution passed by said council, instructing the mayor to notify the owners of the wharf-boat to place said boat at the landing between China and Clay streets, within forty-eight hours. Not having the "compromise papers" before me, I cannot tell what were the "conditions."

To the fifth interrogatory he saith: I do not know that the city council ever applied to Mr. Marshall for permission, written or otherwise, to remove the wharf-boat for quarantine purposes. I know nothin further on the subject.

To the first cross-interrogatory he saith: I have no knowledge of the facts enquired about in fifth interrogatory. I do not know whether wharfage was or was not collected at the quarantine station by Mr. Marshall's collector.

To the second cross-interrogatory he saith: Quarantine did exist at Vicksburg, on account of yellow fever, in the dullest season of the year for steamboating. The quarantine did diminish the landing of boats at the city wharf, for ascending boats were not allowed to land at the city. I cannot say whether the existence of the epidemic produced the effect referred to.

M. SHANNON.

163 STATE OF MISSISSIPPI,
South. Dist., City of Vicksburg, ss:

I, Giles M. Hillyer, commissioner of the U. States circuit court for the district and State aforesaid, do hereby certify that Marmaduke Shannon, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in reply to the interrogatories and cross-interrogatories hereto annexed, and that on oath he states that his answers thereto are true to the best of his knowledge and belief; and that the same was signed by him, in my presence, at my office, in the city of Vicksburg, State of Mississippi, this twenty-sixth day of January, 1870.

GILES M. HILLYER,
Commissioner of the U. S. Circuit Court, for the Southern District of Mississippi.

Endorsed: N. S. 29, in chancery. C. K. Marshall vs. Mayor and Council of the City of Vicksburg. Deposition of M. Shannon for pl'ff.

Filed and opened by me Feb'y 1, 1870.

G. T. SWANN, *Clk.*

164 *Deposition of C. K. Marshall.*

In the circuit court for the U. S. for south. dist. Miss.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG.

Interrogatories to C. K. Marshall.

1. When did you buy the interest of Mrs. Lane in the commons, including the wharf and landing, in front of the original boundary of Vicksburg; and state if her husband, John Lane, or anybody else, ever told you, before your purchase of her interest, or since, that he was prosecuting the suit in the United States court against S. S. Prentiss et al. for the benefit of the city of Vicksburg; and state what he did tell you about his object in bringing that suit.

2. Did you ever offer to sell to the city all or any part of the landing embraced in this controversy, disconnected with any other part of the landing. If you did, state when it was, and what property you offered to sell, and whether the mayor and council at that time disputed your title or right to sell, or asserted to you in your hearing any claim to the property; and if you have any papers or writings touching said offer,
165 and the action of the city council thereon, file them with your answer hereto, and state whether they are the original papers or copies, and if copies, how you know them to be such.

3. State whether you know of the city's asserting or claiming any further right or title to the landing or commons after they had been recovered by Mr. Prentiss and others, and before your purchase of that property, or before their application to be made a party to said suit in the United States court, or had any such claim; and, if so, when and from whom did you obtain such notice; and state whether you purchased in good faith, believing the city and all others at that time recognized and treated the commons and landing as private property.

4. State who first initiated or proposed the compromise that was made by you with the city, and especially whether you first proposed it to the city; and if you have any letter or paper on that subject, file it with your answer hereto, and state by whom and when it was written, and whether it is the original or a copy, and how you know it to be one or the other.

5. State how much money the city paid you for the landing, or in consideration of the contracts you made with the mayor and council in
166 regard to the landing in November, 1851. Specify all they paid you then or since in consideration of that contract, or in payment of the property described in that contract, and explain what the appropriation of the $1,000, or any other sum subsequently appropriated by the city to you, or in your name, was for, and all you know touching the same, and especially whether the whole or any part of it was received by you for yourself or your own use and benefit.

6. State whether you wrote the ordinance establishing the rates of wharfage on steamboats as it was passed by the city council. Explain what agency you had in the preparation or passage of that ordinance.

and all you know in relation to it; and if you have any letter or paper bearing upon it, file it with your answer hereto, and state whether it is an original or copy, and how you know it to be such.

7. State whether you ever complained to or remonstrated with the mayor and council, or any of them, of their fixing the wharfage on Yazoo River packets at five dollars per week instead of five dollars per trip, and ask or request a modification of that charge; and, if so, how often and what answer did you receive; and state whether you were
167 benefited or injured by the rates established, and to what extent and how.

8. State whether the ordinance establishing a landing fee of one dollar on flatboats was passed at your instance, or with your consent, and whether you protested against it; and if you have any papers or publications bearing on that subject file them with your answer hereto, and state whether they were laid before or submitted to the mayor and council, and your means of knowledge or information on that subject.

9. State what agency you had in the establishment of quarantines by the city, how many you assented to, and whether you gave any such consent after the refusal of the mayor and council to compensate you for the damage sustained thereby, as testified by Mr. A. Legrand herein; and what loss or damage have you sustained by the several quarantines established by the city; and state, also, whether any wharfage was collected at quarantine, how much, and at what times.

10. Did you ever, directly or indirectly, offer to compromise or settle with the city your losses or damage on account of quarantines? State all you know touching that offer, and whether you consider the amount you proposed to receive as a full remuneration for your loss,
168 and why you were willing to receive so small a sum.

11. At what time was the trade and commerce on the Mississippi River interrupted by the war; and what effect did the war have on the income of your landing and wharf?

12. When did you leave Vicksburg for Virginia, in 1861, and how often did you return to Vicksburg after that time before the final surrender of Gen'l Lee's army, and how long did you remain each visit?

13. When did you first hear that the city had taken possession of the landing, and was that possession taken with your knowledge or consent? State all that transpired between you and the city or any of its officers on that subject.

14. Did you ever verbally or in writing relinquish your claim against the city for your unexpired term in the landing, or for damages on account of the various quarantines, or interruption of your income and revenue therefrom, on account of city ordinances, war, or other causes? If so, state when, and if in writing file the original or a copy of your release.

15. Was any extension of time ever granted you by the city after your contract of November, 1851? If so, state when the extension was
169 made, and for what time.

16. State when the city first applied to be made a party to said suit, and whether you had been before that time *been* put in possession of the whole of the landing now in controversy within the original limits of the town, under the orders or decree of the United States court, and whether Rowe & Co. were at that time occupying the portion of the landing held by them, under a contract with you and by your permission or authority.

17. State what you know of the payment or non-payment of wharfage from May, 1861, to May, 1862, and if you kept on the wharf-boat a

blank book for receipts, and also what became of that book and unpaid receipts.

18. State whether you had up to the year 1867 paid off all the liabilities due for the purchase of the wharf, as agreed on in the contract with the city, and if not, why. File any papers explanatory thereof.

19. State what the yearly income of the wharf and landing amounted to while you had possession, and also if, in your proposal to compromise, the mayor and council obtained a report of you as to the amount.

T. A. MARSHALL,
Att'y for Compl't.

170 *Cross-interrogatories to C. K. Marshall.*

X-inte'ry 1. At the time you made the compromise with the mayor and council of Vicksburg about the city landing and commons, was not said city asserting claim to the same, and had not the city been made party to a suit in U. States circuit court with a view to assert her claim to said property?

X-int. 2. State whether or not the ordinances referred to in sixth interrogatory were not framed with your knowledge or assent—whether yourself and Porterfield did not agree or acquiesce in it. State also whether Porterfield and yourself did not agree or acquiesce in the rates of wharfage on the Yazoo packets.

X-int. 3. When you applied with others for the establishment of quarantines, did you then notify the city authorities that you would insist on the quarantine as a breach of the contract with the city, or as a ground to claim damages? Was a report ever made on your application for compensation? Was your application refused, and for what reason? State also whether your collector of wharfage was at the quarantine ground or other place to receive wharfage during the quarantines.

X-int. 4. Did you ever apply to the city authorities for monies
171 in 1851 or 1852 to enable you to go on with your contract with the city? If yea, for what purpose were such moneys appropriated to you, and how much, and did you ever pay the same back, and when?

X-int. 5. Did you have a collector of wharfage in 1861 and part of 1862? If you did not, why?

X-int. 7. Did you pay off the incumbrances on the wharf property or landing, as required by the contract, and within the time stipulated? Did you so apply the income of the landing as contemplated by the contract?

Int-x 7. If you state the yearly income of the wharf and landing, as asked in 19th int., do so for each year, and state whether you do so from memory or from books and vouchers.

SIMRALL AND YOUNG,
Sol. for Def't.

In the circuit court of the United States for the southern district of Mississippi.

C. K. MARSHALL
vs. } In equity.
MAYOR AND COUNCIL OF CITY OF VICKSBURG.

The deposition of C. K. MARSHALL, plaintiff in the above cause, taken before Giles M. Hillyer, a commissioner of said court, at his office in

the city of Vicksburg, in said district and State, by consent of parties, and on the interrogatories and cross-interrogatories hereto annexed.

172 Said C. K. Marshall, plaintiff as aforesaid, having been duly sworn, according to law, and examined, answers as follows:

First. To the first interrogatory he saith: I contracted with John Lane and his wife for their interests in the "commons," including the wharf and landing, lying in front of the city of Vicksburg, in the early part of 1849. Mr. Lane never once intimated to me any plan or design of conducting the suit in question for the wharf and commons property for the benefit of the city. He always said he was doing it for the sole benefit of the female heirs of N. Vick, sen'r, deceased, and their children. He stated to me that when S. S. Prentiss first recovered the property he went to the city authorities and offered to institute a suit for all that he considered belonging to the female heirs, on condition that the mayor and council would employ the lawyers, pay all the expenses, and hold the family harmless of debt. The offer was declined. In 1838 Mr. Lane instituted his suit in behalf of the female heirs of said Vick. No person ever hinted to me in any way that Mr. Lane was prosecuting the suit for the benefit of the corporation of Vicksburg before I made the purchase.

173 Second. To the second interrogatory he saith: I offered to sell all the wharf or landing involved in this investigation, wholly disconnected with any other property whatever, either lots or wharves. I proposed to take $50,000 (fifty thousand dollars) for the property, payable in ten years with six per cent. interest. My titles I always understood were considered clear and good by all the citizens who spoke of the matter, and in no form or manner did any member of the city council call them in question. I first offered to sell the city the wharf and landing in July, 1850. Letter marked Exhibit A is a copy of the original communication made by M. C. Folkes, mayor, and so certified by him. The other documents herewith filed, and marked as Exhibits A No. 1, A No. 2, A No. 3, and A No. 4, relate to these interrogatories, and are copies obtained from the originals on file in the mayor's office, and so certified to by M. C. Folkes, mayor. I was openly and daily engaged for eighteen months, beginning with the year 1849, in purchasing and perfecting the titles to the wharves and commons property, and in daily intercourse with members of the city council, and no one even disputed or suggested a doubt about my titles, or asserted in any way a claim to the property.

174 Third. To the third interrogatory he saith: I never heard the faintest intimation of any claim entertained by the city to the commons property from the day S. S. Prentiss et al. took possession till long after I had purchased the property, was in possession, and paying city taxes on the property. The application of the city to be made a party to the suit, was the first intimation I remember to have heard of any supposed claim or interest the city had to set up. On the 9th of April, 1851, a committee, appointed by the city council to purchase the wharf and landing, addressed me a letter offering to purchase the property. But exhibit marked "B," and herewith filed, is a copy made from my original letter addressed to said committee, a copy of which I presented to the committee in answer to their offer to purchase the property. I believed when I purchased the property I was obtaining a clear title, and acted in good faith throughout the entire proceedings; and I understood the city to concur in the integrity of my titles. The city so acknowledged them in the action taken, as exhibited in

a printed circular published by myself at the time of its date, and marked "Exhibit B, No. 1," and herewith filed. The oldest
175 and most esteemed citizens, merchants, bankers, and dealers in real estate, owned the wharves and lots, and sold them to me, having for many years regarded all the property called "commons" as private property. My confidence in my titles was confirmed by purchasing, among many other sorts of claims, the titles of the city made pursuant to law by the assessor and collector of city taxes, under sales made to recover taxes as ordered by the mayor and council from year to year. Exhibits marked "B, No. 2," and herewith filed, are copies of, or original deeds and tax receipts. In further reply to this interrogatory, I state that no notice was ever given me of any purpose to revive or set up any claim to the property; and I file "Exhibit No. 3" as part of this answer.

Fourth. To the fourth interrogatory he saith: I did not propose any compromise. The first I ever heard of it was through A. B. Reading, esq., and I was led to believe he opened the subject to me at the suggestion of the landing committee. It was not at my suggestion. The interviews were verbal, consequently there are no papers to offer.

Fifth. To the fifth interrogatory he saith: The city never paid me one farthing for the property in question, or in consideration of the contract made in November, 1851; neither at the time the contract
176 was made, nor at any subsequent period. One thousand dollars were appropriated in connexion with the general adjustment, nominally to me, but really to and for the benefit of C. Fraisse & Co., or known as F. A. Rowe & Co., who had expended considerable money on mail contracts, improving the upper wharf, and mooring a wharf-boat at that place. The city council appropriated this sum in "scrip" or "city paper," and, as I learned from the parties, to compensate them for losses sustained on their attempting to establish a new wharf. At their request I allowed it to be issued in my name, to aid them, as I understood from them, to avoid some complications of their affairs in closing out their business. But it was never intimated that it had any relation to the compromise, so called, between myself and the city council, as a consideration for any property or services. Messrs. Fraisse and Rowe delayed to remove their wharf-boat, that the city might establish the one agreed on between the council and myself, and held on to their mail contract and boat business till their complications were all adjusted.

Sixth. To the sixth interrogatory he saith: I did not write the ordinances in question. The terms and conditions of wharfage had
177 been agreed on between myself and Mr. Porterfield, and a copy of that agreement I furnished the council. Exhibit marked "B, No. 5" is a certified copy of that contract. After the compromise was closed, and all seemed ready to work well, several difficulties arose, and I prepared and laid before the council a scheme of wharfage, remodeling the whole plan. It was not acted on by the council. Exhibit marked "B, No. 5," page No. 9, is a certified copy of the ordinance limiting the wharfage to $5 00 per week. Exhibits "B, No. 5" and "B, No. 6" are herewith filed.

Seventh. To the seventh interrogatory he saith: In a quiet way I did all I deemed advisable to cure this error. I had a plan of general reform of all the arrangements made, and looked to the immediate future for a correction. My remonstrance was to the members of the council. When I applied, in 1867, for a receiver in this suit, I proved the remonstrance by W. G. Bender, and I presume he has again deposed to this fact. The only answer I could obtain at any time was what seemed to me a frivolous evasion of the question. I should have taken steps to

correct this evil and error, but I hoped to get the whole system reorganized on the plan of charging wharfage by the tonnage of boats,
178 instead of a uniform charge for all boats, irrespective of size or tonnage; consequently little concern was felt for a long time, and little said, to allow all bad feeling to die out and get redress in another form. I prepared and laid before the council an ordinance on this plan, but it died on the table of the council. By the loss of the wharfage on the Yazoo packets and the failure to collect the $5 00 per trip, I lost the income from several steamers that made two trips per week nearly or quite all the year; and a large part of the year others made three trips per week; from all which, for eight years, I did not collect as agreed on in the contract; and so far from being benefitted by the course pursued by the city council, I lost from forty to sixty dollars per month for the greater part of each year, for eight years.

Eighth. To the eighth interrogatory he saith: In June of 1852, the city council, without my knowledge or consent, passed the ordinance recorded on pages 92 and 93 of the volume of city ordinances, a certified copy of which is herewith filed, and heretofore referred to as exhibit marked "B, No. 6," on page No. 2 of said exhibit; and under this ordinance the city, against my remonstrance, collected one dollar of
179 extra flat-boat wharfage. Page No. 1 of same exhibit is a certified copy of the ordinance agreed on in the contract of 1851. Exhibit marked "C, No. 1" is filed as an exhibit to show the action I took at the time in employing legal assistance to persuade the city of its error. Exhibit marked "C, No. 2," herewith filed, was also published at the time of its date. Exhibit marked "C, No. 1" was duly presented to the mayor and council, after being fully canvassed privately, and was for a number of months in their possession; and no action being taken, and none intended to be taken, the original document was returned to me; and I know this to be the same paper. No action was ever taken on the complaint by the city council. I made it my business to have the article prepared by Mr. Smedes read and considered by several members of the city council outside of the official meetings, that they might be prepared to act in the case; but no reparation was made to me.

Ninth. To the ninth interrogatory he saith: I had nothing to do with establishing quarantines. After the city refused to adjust the lost time for the first two quarantines of the city, I was not applied to for my consent again. From the best information I can obtain, I lost in
180 time over four months in 1853. The pecuniary value I never inquired into, and do not know, and have no means of knowing. In 1854, by the prevalence of the epidemic and suspension of business, I lost about two and a half months; in 1855 about three months, and about two months in 1858, as near as I can learn after much painstaking to ascertain. I cannot tell the extent of the damage, but regard the money collected by the city since the war, in the space of the time lost, the proper measure. When the wharf-boat was first taken to the quarantine station, the clerk of the boat, Mr. Ja's Campbell, informed me that he collected three dollars, the customary fee, from three steamers; the fourth objected to paying wharfage in the woods, and no more was ever collected that I ever heard of. I obtained certified copies of all the available information on the subject of quarantines, &c., and the acts of the city council in relation to them, from the old files of the Vicksburg Whig; and the correctness of the copies were certified to by Mr. Shannon, the publisher of that journal. They were designed as exhibits in this cause, but by misapprehension of the commissioner they were
181 sent to the clerk of the United States circuit court for the south-

ern district of Mississippi, at Jackson. I request reference to them as exhibits in the premises. When I am asked what agency I had in establishing quarantines, though I could have none directly, I advised them as valuable sanitary measures, in a petition with many citizens; and it is due that the reason the city asked my consent for their establishment should be given in my answer. Exhibit marked "D, No. 1," and certified as a true and correct copy of council proceedings by M. Shannon, esq., is herewith filed. After the acts of the council, and with the views of council furnished in said exhibit, the city authorities sought my consent to the removal of the wharf-boat to the quarantine grounds, that the contract might not thereby be so violated as to put in peril the possession of the wharf by the city. Exhibit "D, No. 2" is a copy of Legrand's report to the mayor and council, on my application, and certified to as a true copy by M. C. Folkes, mayor of the city.

Tenth. To the tenth interrogatory he saith: I did by my counsel make a direct and explicit offer to compromise with the city for the time lost by the quarantines. Exhibit marked "E, No. 1," herewith filed,
182 is, I believe, the original copy of the petition furnished me by the attorneys of the city council, Messrs. Merwin and Young. At the close of the war I found that I owed on the original purchase of the wharf property in question near thirty thousand dollars. My creditors were clamorous for the money. Among other claims was one for nearly six thousand dollars, secured by deed of trust on the Prentiss House, and the property was advertised for sale. I saw no way to raise the money and save the building but at the greatest sacrafice. The building was worth fully forty thousand dollars. I considered the amount due me for the time lost on my time as per contract, and the money the city had collected in my time after the war, equal at least to that sum. If I could save the house by the loss of that sum I preferred to save the house, and consequently agreed to give up this large claim for the trifle of less than six thousand dollars to save the hotel. My petition was presented to the city council, as I learned from its members, on the 9th of April, 1866, by Mr. John Porterfield, a member of that body, and referred, as he informed me, to legal counsel. Exhibit marked "E, No. 2" was presented to me by one of the city's attorneys, and
183 is herewith filed. I failed to get the relief I sought, and some of my friends took the matter of the debt in hand, and by very great sacrifices of money I obtained temperary relief, and have kept off the sale of the property to this time.

Eleventh. To the eleventh interrogatory he saith: Nearly all steamboats ceased to run or navigate the waters of the Mississippi River after the blockade of the river at Cairo by U. S. soldiers in 1861, April. From Vicksburg south, when great government (i. e. confederate government) emergencies arose, for short spells of time the number of steamers was increased. In April, 1861, a proclamation was made by President Davis, offering letters of marque and reprisal, which drove steamers to enter the government service. Exhibit marked "F, No. 1" is herewith filed as a true and authenticated copy of said proclamation; also copies of other notices of the cessation of business on the upper waters of the river. President Lincoln issued orders to stop the use of steamers on these waters. (See Statutes at Large, vol. —, page 319; and appendix, pages 1, 2, 3, and 5; also page 319.) On the 7th of May, 1861,
Mr. Secretary Chase established a blockade of the Mississippi at
184 Cairo. Exhibit marked "F, No. 2" is herewith filed. I obtained this from the Secretary of State of Illinois. The effect of the war upon my income from the wharf was such that it rendered it nearly or

quite worthless to me for the space of about one year, and except to keep out of the army but few men would have accepted the confederate money that might have been collected for attending to it. I regarded it as abandoned, and looked to the city to make up the lost time. Exhibit marked "F, No. 3," and herewith filed, contains uncollected receipts torn from a blank record book, and were furnished to me by the clerk of the wharf-boat. I know by the handwriting of that gentleman that they are genuine originals. I have had a great many of them, but they were carried off from my residence by U. S. soldiers in a desk I lost when this city fell into the hands of Gen. Grant. Mr. Ja's Watts, deceased, who was employed on the wharf-boat in 1861 and 1862, informed me that "any quantity of those uncollected receipts were lying round on the wharf-boat." Steamboating was deemed to be the business of the confederate government, and the boats did not and would not pay wharfage.

185 Twelfth. To the twelfth interrogatory he saith: I left Vicksburg in May, 1861, and spent the summer and fall of the year in Virginia, organizing hospitals, &c., in connection with the confederate army relief arrangements. I returned home again in December, and in a short time, probably two or three weeks, returned to my duties in Virginia. In May, 1862, I visited Vicksburg again, and removed my family to the interior of the State. I was in this city again from the tenth of June till the 23d of that month, and was engaged in removing my furniture to the interior. I was in this place twice for a short period afterwards, before the city fell into the hands of Gen. Grant; how long the visits were I am not able to say.

Thirteenth. To the thirteenth interrogatory he saith: About the middle of June, 1862, the mayor of the city, L. Lindsay, esq., addressed a note to me, in which he informed me that as my time for holding the wharf and collecting the rents had expired the city had taken possession of the property. This was the first intimation I received that the city had seized the wharf. Said seizure was made without my knowledge or consent, unless, being totally powerless and having long

186 regarded the wharf as worthless till the war was over, my simple acquiescence could be so construed. But the thought of relinquishing my just claim for the losses of time as provided for in the contract for the property never once occurred to me. I was advised not to reply to Mr. Lindsay's letter. He thinks I did, as he informs me. I think I did not. His letter was a mere notice of the city's having possession. I was in no way consulted. I know I never for a moment surrendered my rights in the premises. At the date of his note, as near as I can learn, the gunboats, and at least one man-of-war of the U. S. Navy, were on their way up the Mississippi River to bombard and reduce the city of Vicksburg, and did attack it on the 27th of that month. I was not in a condition to consider the subject. I had no intercourse with the officers of the city government, excepting one or two instances of rambling conversations on the streets; and I may have consented for the time being to the possession of the city, or, as it has been called, a "surrender of the property," postponing to the future, when law and justice were administered, the settlement of my rights.

Fourteenth. To the fourteenth interrogatory he saith: I did not

187 relinquish my claims for losses by the quarantines and by the war, at any time, to anybody, in any conceivable manner, or by any public mode. When the war was ended, I returned to Vicksburg as early as possible. Very soon I opened the matter in dispute to the mayor and members of the city council. I urged the city council to

settle with me. Much excitement grew up between certain newspaper critics and writers, and the matter was developed, and much bitterness at times shown; but for weeks that were consumed in the discussion, and in all the articles published to justify the city in declining to settle with me, there never was one word, syllable, or hint suggested that I had ever relinquished my claims. I make this statement from memory. I never heard that I had relinquished my claims and surrendered the wharf, till I began to take depositions on an application for a receiver in this case, in the month of March, 1867. Exhibit herewith filed, marked "G," is adduced to show how free the minds of citizens were from any bias on the question of my surrender. This exhibit was published in 1866 in the city journals, from which I had this copy printed.

Fifteenth. To the fifteenth interrogatory he saith: I never asked for any extension of my time previous to 1865, and never heard that
188 any was allowed till in March of 1867, and then only from one man. I have interrogated all the old members of the city council, to obtain information if any such thing was done in 1862 or 1863, or at any other time; and they are unable to furnish any information on the subject. I never was in any way informed of an extension of my time, and never heard of such a proceeding till in 1867.

Sixteenth. To the sixteenth interrogatory he saith: The city first applied to the court to be made a party to the suit, as I learn from the exhibit herewith filed, marked "A N, No. 1," on the 5th of April, 1851. I was put in possession of all the wharves in front of the original boundaries of the city of Vicksburg, by the U. S. marshal for the southern district of Mississippi, in pursuance of two decrees of the district court of the U. States; copies of which, certified to as such by W. H. Brown, clerk of said court, are herewith filed, and marked Exhibits "A N, No. 3" and "A N, No. 4." I had been put in possession of all the property in question the year before the city applied to be made a party to the suit. When the mayor of the city filed his petition to be made a party to the suit, Messrs. F. A. Rowe & Co. had been my tenants on the
189 wharf for one year, within a few days, acknowledging my title and rights. The lease was, at their request, made to J. K. Yerger, esq., and a printed copy of that lease is herewith filed as an exhibit, and marked "A N N." I know it to be a true copy.

Seventeenth. To the seventeenth interrogatory he saith: I had a blank receipt book made to be used on the wharf-boat. Receipts were filled up, charged in the margin, and then torn from the volume. If the steamer whose name was filled into the blank space paid the fee for wharfage, she of course took the receipt. If not, the reason of nonpayment was written across the face of the receipt, and it was laid aside and finally delivered to me or my agent, or allowed to remain for a future collection on the wharf-boat. Exhibit marked "F, No. 3," already filed, illustrates this. I hear the book of blanks was never corrected so as to erase the sums marked in the margin and not collected. I understand from rumor that the book is lost; at any rate I have not seen it since 1860.

Eighteenth. To the eighteenth interrogatory he saith: I had not so paid up to the year 1867. Whatever balance was due and unpaid was amply secured by deeds of trust on separate property.

190 Nineteenth. To the nineteenth interrogatory he saith: When Gen. Grant took this city, my writing-desk, with all my wharf records and books, was taken from my house, and I have no means of making a report. A few scraps of monthly reports remain, but I cannot

make up a report. My agent did furnish a report, but I have not the means of making up another.

First cross. To the first cross-interrogatory he saith: At the time the compromise was made with the mayor and council, the city had taken some steps towards asserting a claim. She was never made a party to the pending suit, that I knew of. I have filed a copy of the petition of the mayor asking for the city to be allowed to be made a party to the suit, marked Exhibit "A N, No. 1," but, to the best of my knowledge and belief, she was not made a party to the suit. I never so understood it.

Second cross. To the second cross-interrogatory he saith: I have answered this interrogatory in my replies to the chief-interrogatories Nos. 6 and 7, with the exhibits therewith filed, and I can state nothing further. Mr. Porterfield did all he could to reduce wharfages; but as it stands, we never assented.

191 Third cross. To the third cross-interrogatory he saith: I never applied for a quarantine to be established. Petitions, signed by numerous citizens, were sometimes circulated for the purpose of sustaining the council in establishing such measures, and I signed them. I gave no notice when I signed a petition. I notified the council in 1852 that the wharf-boat had been removed from its place, and it must be restored. Hence the application to me for the right to remove the wharf-boat to the quarantine station for the establishment of the quarantine in 1853. These questions are more fully answered in my reply to interrogatory-in-chief No. 9, and exhibits thereto annexed.

Fourth cross. To the fourth cross-interrogatory he saith: I never applied to the city authorities for one dime in 1851 or 1852, nor at any other time, to enable me to carry out my contracts. I do not know who originated the plan of getting the city to appropriate the sum of one thousand dollars in "city scrip." The money so issued was used for the benefit of Fraisse, Rowe, and other persons constituting the company, who had established a wharf at the upper landing, graded the grounds, and done considerable improvement, and got involved in a Yazoo mail contract, and in some way, never fully explained to me, the money

192 was used among the persons of the company, as I have been informed by some of their associates. I never paid any money back to the city, as I never borrowed any.

Fifth cross. To the fifth cross-interrogatory he saith: My agent and collector was a Union man, and was driven away from the city in April or May of 1861, and I could only obtain irregular and irresponsible persons to attend to my ferry income, house rents, and other business. The war carried into the army nearly every efficient man.

Sixth cross. To the sixth cross-interrogatory he saith: I did not pay off the debts and incumbrances on the wharf property at the dates required by the terms of the contract. Nor did I so apply all the revenues of the landing. But the debts were amply secured by property disconnected with the landing worth many times more than the unpaid claims. The city council offered to buy out all my unexpired time in 1857, and after the plan was agreed upon new terms were required, and very expensive. I was required to purchase and add to the property already contracted for, without further compensation, other wharves belonging to private parties, outside of the plans agreed on by myself and the city. I spent my income in the purchase of this property,

193 and then it fell upon my hands, the city failing to comply with the agreement. Letter marked "A R," and herewith filed as an exhibit, is a correct copy from the original now in my possession. On

this letter I acted, and spent my landing income to oblige the city. This is what became of the landing income.

Seventh cross. To the seventh cross-interrogatory he saith: My books and accounts are lost. They were taken by violence from my house when Vicksburg surrendered, as I was informed by the persons then occupying it; consequently I cannot make out a business-like estimate of the yearly income of the property.

C. K. MARSHALL.

STATE OF MISSISSIPPI,
Southern District, City of Vicksburg, ss:

I, Giles M. Hillyer, a commissioner of the U. States circuit court for the district and State aforesaid, do hereby certify that Charles K. Marshall, plaintiff in the above-named case, and who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the interrogatories and cross interrogatories hereto annexed; and that on oath he states
194 that his answers thereto are true, to the best of his knowledge and belief; and that the same was signed by him in my presence at my office, in the city of Vicksburg, State of Mississippi, this 1st day of February, 1870.

GILES M. HILLYER,
Commissioner of U. S. Circuit Court for South. Dist. of Missi.

EXHIBIT "A."

VICKSBURG, *July 23rd*, 1850.

HON. SIR: After nearly two years of toil, I have just perfected the title to the entire wharf and landing formerly owned by the city; and believing, in common with my fellow-citizens, that said property should be owned and controlled by the municipal authorities of the city, I sieze this, the first day within the past eighteen years that such an offer has been practicable, to tender a sale of said wharf and landing to the city, and will endeavor to make the terms fair and safe, provided it is deemed advantageous to the city to purchase the same.

Respectfully, yours,

C. K. MARSHALL.

To N. G. BRYSON, Esq.,
Mayor of the City.

(Endorsed:) Exhibit "A," referred to in C. K. Marshall's deposition.
GILES M. HILLYER,
Com'r U. S. Circ't Court Southern Dist. Missi.

195 EXHIBIT "A, No. 1."

At a regular meeting of the board of mayor and council of the city of Vicksburg, held at the city hall on Monday, August the 5th, 1850, a communication from Rev. C. K. Marshall, offering to sell the entire wharf and landing to the city, was read, and, on motion of Mr. Arthur, received, and the following resolution adopted:

Resolved, That a committee of three be appointed to confer with Mr. C. K. Marshall, and to ascertain what arrangements can be made for the final adjustment of the whole question in relation to the commons, or wharf and landing of the city.

The mayor appointed Messrs. Arthur, Marshall, and Gramma as said committee.

(Endorsed:) Copied from the minutes of record in my office. November 30th, 1859.

MILES C. FOLKES, *Mayor.*

Exhibit A, No. 1, referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Commissioner U. S. Circuit Court South. Dist. Missi.

196 EXHIBIT "A, No. 3."

VICKSBURG, *Sept.* 7, 1850.

To the MAYOR AND COUNCIL *of the City of Vicksburg:*

GENTLEMEN: At the solicitation of several citizens, I add to my proposition to sell the wharf and landing to the corporation the following description of the boundaries thereof, to wit: Beginning at the southwest corner of lot number one hundred and fifty in square N, as designated on A. M. Winn's map of the city of Vicksburg, and running thence along the east side of Front street to the point where it intersects the south side of Crawford street; thence along the south side of Crawford street to the east side of Commons street; thence along the east side of Commons street to Clay street; thence along the south side of Clay street to Levee street; thence along Levee street extended to the south side of Jackson street; thence east along the south side of Jackson street to the point where it intersects the east line of Water street extended; thence along the east side of Water street to Second East street, and across that street to the east side of the alley in square B; thence along the east
197 side of said alley to the north side of First East street; thence along the south side of First East street to Washington street; and thence along Washington street to the northern boundary of the city; thence with said boundary to the Mississippi River; thence down said river, with the meanders thereof, to the point where it intersects the south line of the said lot No. 150 in square N; extended thence eastwardly with that line to the place of the beginning; except 49 feet lying between Second East and Jackson streets, belonging to Mrs. Mary Cook, and lot No. 193, belonging to Judge Bodley, neither of which are essential to the wharf and landing; also the exclusive right to collect wharfage and use the landing in front of any lots reserved out of the survey of S. S. Prentiss, now owned either in law or equity by me, should the river wash away so as to expose such lots on its margin, and obviously become, in the course of such abrasions, a part of the landing. And I shall reserve three years of the occupancy of lots 119 and 120, on which stands a wooden building, that I may not be oppressed or damaged by a hasty removal of the same. And it is further proposed that I will not and shall not be held responsible to perfect the
198 to such lots as are not necessary to the wharf and landing embraced in the above-recited boundary until the expiration of nine years; and if said title be not made then, and cannot be made then, two competent judges chosen by the mayor and council, and myself or assigns, &c., who shall choose a third, and the three disinterested arbiters thus chosen shall assess their value, and so much shall be subtracted from the amounts due by the corporation for said property; and with this proviso, the deed of conveyance to be a warranty title, and the mayor and council shall pay me $50,000 for said property, in the scrip of the city, payable in ten annual instalments, with six per

cent. interest per annum; three thousand dollars of said sum to be paid in cash.

The privilege of ferrying to the amount of $50 per annum is necessarily reserved.

Respectfully,

C. K. MARSHALL.

Endorsed: Copied from the original on file in my office. November 30th, 1859.

MILES C. FOLKES, *Mayor.*

Exhibit "A, No. 3," referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Circ't Court South. Dist. Missi.

199 EXHIBIT "A, No. 4."

The special committee to whom was referred the petition of C. K. Marshall proposing to sell wharf and landing privileges to the city, have had the same under consideration.

Mr. Marshall submitted to them a proposition in writing, hereto annexed, which the committee have not accepted. The power to create a city debt being entirely in the hands of the people, this proposition, though not accepted by the committee, is hereby referred to the council for such action as it may think proper in the premises.

Sept. 16, 1850.

A. H. ARTHUR,
T. A. MARSHALL,
E. GRAMMA,
Committee.

Endorsed:- Copied from the minutes of record in my office. November 30th, 1859.

MILES C. FOLKES, *Mayor.*

Exhibit "A, No. 4," referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Circ't Court South. Dist. Missi.

EXHIBIT "B."

VICKSBURG, *Thursday, Apr.* 10, 1851.

200 GENTLEMEN: Your note of yesterday, proposing "the purchase of certain grounds in the city of Vicksburg for the purpose of a public wharf and landing," is before me, and I hasten to reply.

You inform me that you "propose to purchase the ground lying between Washington, First East, and Jackson street and the Mississippi River, including the termini of Jackson and First East streets," and I presume you wish all the ground between the termini of those streets and low-water mark of the river.

Having leased the entire landing to Mr. Porterfield for the term of ten years, and fixed the location for his boat between China and Clay streets, it will be utterly impossible for me to sell the above-specified ground and landing at any price.

You inform me that you "have been authorized to extend the purchase, at a reasonable price, to the grounds lying within the following bounds, to wit, between Jackson, Water, and Clay streets and the low-water mark of the Mississippi River."

There not being any "Water street" between Jackson and Clay street for a boundary on the east, I am at a loss to know the amount of land intended, and will wait your views of that boundary. But
201 in no case can I sell any part of said property, except with the condition that my lease to Mr. Porterfield shall be kept inviolate. If you are authorized to make a contract with me so that Mr. Porterfield shall not be annoyed, and the city landing shall be permanently established between China and Clay streets, and but one landing, it will afford me pleasure to advance your laudable views and promote the public prosperity to the utmost of my power.

Respectfully, yours, &c.,

C. K. MARSHALL.

To Messrs. O. O. WOODMAN, J. W. BUCK, *Committee.*

Endorsed: Exhibit "B," referred to in C. K. Marshall's deposition.
GILES M. HILLYER,
Com'r U. S. Circuit Court Southern Dist. Missi.

EXHIBIT "B, No. 1."

Wharf and landing.

CITIZENS: You have a right to know the present state and progress of the negotiations recently pending for the purchase of the landing by the mayor and council. A brief statement will answer a thousand questions.

On Friday, April 11, at an adjourned meeting of the board of the mayor and councilmen, the following resolution was introduced
202 by the alder*der*man of the 4th ward, O. O. Woodman, esq.:

"*Resolved*, That the petition of C. Fraisse and others, relative to the condemnation of the city landing, and the resolution of the councilman of the 2nd ward, with the amendment thereto of the councilman of the 1st ward, now before this board, be referred to the landing committee, with instructions to negotiate with the various claimants of the whole landing in front of the city of Vicksburg for the purchase of the same, provided it can be had free from all incumbrance and at the price of $50,000, upon the terms proposed to the city council during the last municipal year, and for the condemnation of any part or parts thereof which cannot be purchased."

Of course I expected a conference with the committee on landings, or a proposition from the chairman, in strict keeping with the instructions granted, as set forth in the above resolution. On Tuesday night, after retiring, I received at my door the following note and rough draft of a proposition. I did not open the envelope until after breakfast the following morning:

Mr. C. K. MARSHALL.

DEAR SIR: I send you a rough draft of a proposition for a compromise of the landing difficulty. An answer, with a return of this
203 paper, is wanted by 12 o'clock to-morrow, otherwise other arrangements will be made which will preclude an amicable adjustment.

Respectfully, yours,

O. O. WOODMAN.

Propositions.

The city to be invested with the title to the wharf and land described in the petition of C. K. Marshall in October, 1850, with a provision that

in case the river encroaches on adjacent lots of said Marshall, the city shall in that event on such lots also have landing and wharf privileges. And on being so invested with the title of said Marshall, including a transfer to the city of Porterfield's lease, and also transfer to the city of all his rights to the Bobb landing, which was aquired by him through W'm Porterfield, John Bobb, jr., and others; also his claim to the Winn landing, and all other claims which he has to the landing included in the lease to Porterfield, the city will release her title to the residue of said commons property and will pay the said Marshall in her bonds at one, two, three, four, five, six, seven, eight, nine, and ten years, in equal sums, bearing six per cent. interest, payable annually, the sum of twenty thousand dollars; but the said bonds shall not be delivered except upon his having first procured releases by all persons holding liens as
204 to all of said property conveyed to the city; such release, however, of any part of the liens shall entitle said Marshall to a proportionate part of the bonds. The city will also execute and deliver to the said Marshall other like bonds for the further amount of twenty thousand dollars on his procuring, in addition to the above, within sixty days, a cancelment of Porterfield's lease and vesting in the city the title held by him and Porterfield in the Winn and Bobb landings above and below the city to the extent the same was or is owned by either of them, or by John Bobb, jr., and clear of his lien.

It is understood that Samuel Lum is to be allowed to retain the Prentiss House and lots until he is repaid the purchase price thereof, and to that end said Marshall is now to execute and record his bond for a conveyance thereof to said Lum in twelve months, unless before that time he shall refund any money paid by him and cancel any and all of his obligations for said purchase. It is also understood that the sum of twenty-five hundred dollars is now paid by the city for the release of H. J. Bodley and others for lots in said commons, as per deed to accompany this contract. This agreement to be valid as soon as said Marshall, Samuel Lum, W. S. Bodley, and the city shall execute the same.

APRIL 14, 1851.

205 After reading the note I determined not to read the propositions until the entire "day of grace" was past and another day added, to make sure the operation of the fireworks called "other arrangements" threatened in case I did not accept the terms. Meantime I addressed his honor the alderman of the 4th ward the following note:

Copy.

VICKSBURG, *April* 16, 1851.

SIR: Your communication, dated the 14th inst., respecting the wharf and landing was immediately delivered to me by the hands of your clerk. At the earliest opportunity, (8 o'clock yesterday morning,) I opened the envelope and read your note.

Having just seen in the "Whig" a copy of the instructions given you and your associates as the "committee on the wharf and landing" by the mayor and council of this city, I looked, very reasonably, for a communication of a respectful and business-like character. But, to my surprise, I found your note a mere bullying menace, allowing me just four hours, or until 12 o'clock of the 15th instant, to surrender or prepare for the worst. Of course, I did not read the accompanying "rough draft" of a compromise, nor have I opened it, nor shall I, until it suits my "caprice" to do so. As the hour of "high noon," limiting my ac

ceptance of the proposition, expired yesterday, after which you
206 inform me that "other arrangements will be made which will preclude an amicable adjustment," I can only say that you are most cordially welcome to apply yourself to all the "other arrangements" you threaten me with. Trading is one thing, brow-beating is another, and in such a contest I will never surrender. And, sink or swim, survive or perish, I will neither allow you or your party to hurry or disquiet me; and though the whole "commons" in question were covered with lawyers, gathered up from Louisville to New Orleans, and each employed to back you in your purposes, I would still remain unshaken in the maintainance of my just rights, and 99-100ths of the citizens of Vicksburg will sustain me.

You will please consider all further negotiations on the subject of this controversy at an end. Self-respect, in view of your note, demands this course at my hands.

With due respect, I remain, sir, yours.

C. K. MARSHALL.

To O. O. WOODMAN, Esq.,
Chairman of Committee on Wharf and Landing.

A few words of explanation may be necessary to develope the entire import of this diplomatic negotiation. It is quite evident that the druggist has not regarded his instructions in the above propositions any more than if he had confined himself to the task of paying me out of
the city funds to settle the long-mooted question among chemists
207 whether saltpetre will explode or not, and several citizens have already added largely to the multitude of conditions on which they intend to insist. One requires me to pay him $4,500 for an old wooden house; another, $2,500 for a snug little cottage he wants to sell; another has some old saddles and harness he insists I must take off his hands, or pay him for the privilege of using them; another demands that I shall square the circle; another that I go in search of Sir John Franklin at my own expense and pay the city in my bonds if I fail to fetch him from the jaws of the Arctos; another that I reveal the author of Junius.

I fear the author of the resolution never candidly entertained the idea of purchasing the property of me at all; for he certainly knows that I could do any of the above things as easily, almost, as I could comply with the terms of his resolution as above, or the "rough propositions" addressed to me. All this is mere fustian, intended to force public opinion to the scheme of condemnation, if he can do it under the false idea that I do not intend at a proper time to sell the property to the city.

Again, what connection has Samuel Lum's trade for the fractional interest in the Prentiss House, scarcely amounting to the shadow of a phantom, to do with the diplomatic duties of the alderman of
208 ward No. 4? Or how does this gentleman, sworn to discharge his official duties for the good of the city, find it devolving on him, in his official capacity, to lend his sympathies and influence to help his friend Lum out of a humiliating and loosing speculation?

I am requested to say before "12 o'clock to-morrow" that I will let Mr. Lum enjoy the use of the Prentiss House till he gets back his $10,000, the interest on it for three years, and probably a $1,000 of court costs he will have to bond, and another $1,000 in fees to his lawyers, besides his incidental expenses arising out of the trade, and a bonus for his "good will" at what he may deem it worth. Wonderful! By the

time that would all be paid back into his long purse the statute of limitations would make the property his own twice over. And pray, Mr. Woodman, what public service has your protegée rendered that he should be taken under the guardianship of the committee and treated as a minor by the fathers of the city? According to the decisions of the courts, the opinions of arbiters chosen by us to close the controversy, and my fulfilment of two other conditions, on either of which I was pledged the titles by Mr. Lum, I am the just and only owner of the property; and, so far as rights and equity are concerned, Mr. Lum
209 has not as much interest in the hotel as the hides of the rats that burrow under its foundations would bring in the glove market of Paris, although I doubt not that the affair will cost him from $15,000 to $20,000 before he gets through.

Another curious item in the above is the offer of $20,000 in city bonds to break up my lease with Mr. Porterfield. Mr. W. knows that Mr. Porterfield has over and again declared that he would not take less than $50,000 cash for his lease. I wonder how much of the alderman's zeal for the public good is directed to break Mr. Porterfield down.

Finally, I was to pay W. S. Bodley $2,500 cash for his conveyance to me of his interest in a few sporadic lots, fit only for shingle sheds, and the deed was actually drawn up and signed, and the boat expected in a few hours to take him to Louisville with this round sum for a fractional interest equal to one-sixth of a twelfth in each of said lots, all of which I would not pay ten dollars for, except for the purpose of ending all further debate. The proposition says, "It is also understood that the sum of $2,500 is now paid by the city." If I comprehend this, it means that instead of making me a cash payment for my property the committee has agreed to advance to him that amount for me as the first instalment of the purchase money, as a sort of bonus for legal advice, while the fractions of the few lots would be thrown in to tempt
210 me to trade. The judge is a thorough lawyer, and should be paid well for his services, and is not to be blamed for his demand; and if the committee on the landing can get the consent of the board to embark in a fresh suit to recover 7-11ths of a decayed moonbeam that fell through a bilious cloud on the 27th of April, 1829, no man can succeed, if he does not.

Meantime I am willing to give any further reasonable guaranty that the central landing shall be the only and permanent place for the wharf-boat the citizens may require, and my counsellors, Messrs. Smedes and Marshall, recommend.

And Mr. Porterfield agrees to enter into a contract binding himself and his successors not to take the advantages of his position some persons seem to apprehend he will.

C. K. MARSHALL.

Endorsed: Exhibit "B, No. 1," referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Cir. Court So. Dist. Missi.

EXHIBIT "B, No. 2."

This indenture, made and entered into this sixteenth day of September, in the year of our Lord one thousand eight hundred and forty-four, between Edward B. Scarborough, sheriff of Warren County, Mis-
211 sissippi, of the one part, and Shepherd Brown and Joseph H.

Johnston, of the same county and State, of the other part, witnesseth:

That whereas, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and forty-four, the writ of the State of Mississippi of fieri facias was issued forth out of the circuit court of Warren County to the sheriff of said county directed, commanding him that of the goods and chattels, lands and tenements of Osmun Claiborne, John S. Gooch, Claiborne Steele, and Harvey M. Jenkins, the last two being merchants and partners in trade under the firm of Steele and Jenkins, late of his county, he should cause to be made the sum of one thousand seven hundred and thirty-five dollars and three cents, which the president, directors, and company of the Planters' Bank of the State of Mississippi lately in the circuit court of Warren aforesaid had recovered against them for damages which they had sustained by reason of the non-performance of a certain promise and assumption by the said Osmun Claiborne, John S. Gooch, and Steele and Jenkins, to the said president, directors, and company of the said Planters' Bank of the State of Mississippi, lately made, with interest on said sum at eight per cent. per annum, from the twenty-fifth day of January, one
212 thousand eight hundred and thirty-eight, until paid; also, the sum of thirty-seven dollars and eighty-seven and a half cents for their costs by them about their suit in that behalf expended, whereof the said Claiborne, Gooch, and Steele and Jenkins were convicted, as appeared of record, and that he should have the said monies before the judge of the said circuit court aforesaid on the third Monday of October then next to render to the said president, directors, and company of said bank for their damages and costs aforesaid, and that he should have then there that writ.

And whereas the said writ came to the hands of the said sheriff, who, by virtue thereof, levied on that portion of land vested in the wharf company, beginning at the southwest corner of lot No. 72; thence south sixteen degrees west to the northwest corner of lot No. 95; thence north seventy-four degrees west to the northwest corner of lot No. 108; thence south sixteen degrees west sixty-five feet to a point *to a point* in the front line of lot No. 110, ten feet from the southwest corner thereof; thence north seventy-four degrees west to the Mississippi River; thence up the same, with its meanders, to the lower line of S. S. Prentiss' share; thence with the same to the southwest corner of lot No. 72, on a plat of lots laid off by S. S. Prentiss and others, the place of beginning. The interest of said Steele and Jenkins in the said property will
213 more appear by reference to a deed of partition made by S. S. Prentiss and others on the 7th day of May, 1838. Also the following described lots, to wit: Lots No. 18 and 26 in square No. 2; lots No. 32 and 36, in square No. 3; lots No. 41 and 47 in square No. 4, laid off in the city of Vicksburg, by the Cotton Press Company. Also an undivided interest of one-half in nine lots laid off by S. S. Prentiss and others, to wit: Lots No. 47, 73, 76, 118, 121, 127, 128, 129, and 139, all in the city of Vicksburg, as the property of the said Steele and Jenkins; and the said sheriff having previously given thirty days' notice that, on the day of the date hereof, he would expose to public sale at the door of the court-house in the city of Vicksburg, to the highest bidder for cash, all the right, title, interest, claim, and demand which the said Steele and Jenkins had in and to the above-described property, or so much thereof as would pay and satisfy said writ of fieri facias, did then and there expose to public sale all the right, title, interest, claim, and demand as aforesaid in the above-described property; and the said

Shepherd Brown and Joseph H. Johnston did then and there appear within the hours prescribed by law, and bid for the same the sum of two hundred and ninety-two dollars; they being the highest and
214 best bidders therefor, became the purchasers thereof, and having since paid the purchase money to the said sheriff, is now desirous of obtaining a title to the said described property in consequence thereof:

Now, therefore, this indenture witnesseth that the said Edward B. Scarborough, sheriff of Warren County aforesaid, for and in consideration of the premises, and of the said sum of two hundred and ninety-two dollars to him in hand paid, as sheriff aforesaid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell, unto the said Shepherd Brown and Joseph H. Johnston, and their heirs and assigns, all the right, title, interest, claim, and demand, both at law and in equity, which the said Steele and Jenkins had in and to the above-described real estate so as aforesaid levied on, and so as aforesaid exposed to public sale, in and by virtue of the said writ of fieri facias, together with all and singular the premises thereunto belonging, or in anywise appertaining:

To have and to hold to them, the said Shepherd Brown and Joseph H. Johnston, and their heirs and assigns, all the right, title, interest, claim, and demand the said Steele and Jenkins had in and to the last-described property, forever, either in law or equity.

215 In witness whereof the said Edward B. Scarborough, sheriff as aforesaid, doth hereunto set his hand and seal the day and year first before written.

E. B. SCARBOROUGH, *Sh'ff.* [SEAL.]

THE STATE OF MISSISSIPPI,
Warren County, set:

Personally appeared before me, A. H. Rowlett, clerk of the probate court of said county, the within-named Edward B. Scarborough, sheriff of Warren County, who acknowledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned as his act and deed as sheriff aforesaid.

Given under my hand and seal of office this 19th day of October, A. D. 1844.

[L. S.] A. H. ROWLETT, *Clk.*

THE STATE OF MISSISSIPPI,
Warren County, set:

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 28th day of October, 1844, whereupon I have made the same of record in Book T, pages 169 and 170.

Given under my hand and seal of office this 18th day of November, A. D. 1844.

[L. S.] A. H. ROWLETT, *Clk.*

216 (Endorsed:) Deed. Edward B. Scarborough, sheriff, to Shepherd Brown and Joseph H. Johnston, for Steele and Jenkins' interest in a portion of land vested in the wharf co.; also, lots 18 and 26 in sqr. No. 2; lots 32 and 36 in sqr. No. 3; lots 41 and 47 in sq. No. 4, of the

Cotton Press Co.'s plat; lots 47, 73, 76, 118, 121, 127, 128, 129, and 139, in the city of Vicksburg, as the property of Steele and Jenkins.

Filed for record this 28th day of October, 1844.

A. H. ROWLETT, *Clk.*

Recorded in Book T, pages 169 and 170.

A. H. ROWLETT, *Clk.*

Exhibit B, No. 2, referred to in C. K. Marshall's deposition, with four enclosures.

GILES M. HILLYER,
Com'r U. S. Circ't Court, South. Dist. Miss.

Receipts accompanying Exhibit "B, No. 2," to wit:

$10 00—Received of W. H. Newbold ten dollars city tax on his taxable for the year 1848, consisting of 3 lots 140, 141, and 142, sq. M, commons.

Street tax, (specie,) at 40 cents on $100	$4 00
General tax, half scrip at 60 cents on $100	6 00
	$10 00

Fire tax, 50 cts.

S. W. BROWN,
Assessor and Collector for the City of Vicksburg.

$12 00—Received of W. H. Newbold twelve dollars city tax on his taxable property for the year 1847, consisting of lots 140, 141, 142, sq. M, Value, $1,200.

217	Street tax, (specie,) at 40 cents on $100	$4 80
	General tax, half scrip, at 60 cents on $100	7 20
		$12 00
	Scrip	$3 60
	Specie	$8 40
		12 00

S. W. BROWN,
Assessor and Collector for the City of Vicksburg.

$10 80—Received of W. H. Newbold, R. K. Arthur, ag't, ten dollars and eighty cents, city taxes on his taxable property for the year 1846, consisting of three lots, 140, 141, and 142, sq. M. Value, $1,200.

Street tax, (specie,) at 40 cents on $100	$4 80
General tax, half scrip, at 50 cents on $100	6 00
	$10 80
Costs adv't'g	54
	11 34
Scrip	3 00
Specie	7 80

S. W. BROWN,
Assessor and Collector for the City of Vicksburg.

$8 40—Received of W. H. Newbold, R. K. Arthur, ag't, eight dollars and forty cents, city tax on his taxable property for the year 1845, consisting of lots 140, 141, 142, sq. M. P. P. Value, $1,200.

Street tax, (specie,) at 40 cents on $100	$4 80
General tax, half scrip, at 30 cents on $100	3 60
	$8 40
Add 8 per c't costs	67
	9 07
Scrip	$1 80
Specie	6 60

S. W. BROWN,
Assessor and Collector for the City of Vicksburg.

218 $10 00—Received of W. H. Newbold, R. K. Arthur, ag't, ten dollars, city tax on his taxable property for the year 1849, consisting of lot 140, 141, and 142, sq. M. P. P. Value, $100.

Street tax, (specie,) at 40 cents on $100	$4 00
General tax, half scrip, at 60 cents on $100	6 00
	$10 00

J. GREEN,
Assessor and Collector for the City of Vicksburg.

Owner of lot No. 142 in sq. M, commons, plat assessed as the property of W. H. Newbold, to the city of Vicksburg, Dr.

To work done in making stone curb and gutter in front of the south line of lot on South street, 87 f't, *a* $1 ..... $87 60

To the credit of A. Gamble.

Rec'd payment from Messrs. Brown and Johnston, Vicksburg, 25th May, 1847.

S. W. BROWN,
Assessor and Collector of Taxes in and for the City of Vicksburg.

Accompanying Exhibit B, No. 2, referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Circ't Court, South. Dist. Missi.

I, Samuel W. Brown, assessor and collector of taxes in and for the city of Vicksburg, in the county of Warren, and State of Mississippi, have this day, according to law, sold the following lot or parcel of land, to wit: The east half of lot one hundred and thirty-nine (139) in
219 square M, in a plat of lots laid off by S. S. Prentiss and others in front of the city of Vicksburg, as the property of owner unknown, for the taxes due thereon for the year eighteen hundred and forty-three, to wit, the sum of four dollars, when Shepherd Brown and Joseph H. Johnston being the best bidders at the sum of five dollars and seventy cents. I therefore sell and convey said lots or parcel of land to the said

Shepherd Brown and Joseph H. Johnston, their heirs and assigns, forever.

Given under my hand and seal at Vicksburg, Mi, this seventeenth day of February, in the year eighteen hundred and forty-five.

SAMUEL W. BROWN. [SEAL.]

Assessor and Collector of Taxes in and for the City of Vicksburg.

THE STATE OF MISSISSIPPI.

City of Vicksburg:

Personally appeared before me, Miles C. Folkes, mayor of the city of Vicksburg, the within-named Samuel W. Brown, assessor and collector of taxes in and for said city of Vicksburg, who acknowled. that he signed, sealed, and delivered the annexed and foregoing instrument of writing on the day and year therein stated and for the purposes therein specified as his act and deed.

220 Given under my hand and seal this 20th day of February, A. D. 1845.

[L. S.] MILES C. FOLKES, *Mayor.*

$4 00—Received of owner of lot No. 139 in sq. M, in Prentiss plat, four dollars, city taxes on his taxable property for the year 1843, consisting of lot No. 139 in sq. M, Prentiss plat. Value, $500; at 80 cts. on $100, $4 00.

Endorsed on the face: Correctly copied from the tax list.

MILES C. FOLKES, *Clk.*

Endorsed: S. W. Brown to (Tax deed) S. Brown and J. H. Johnston, lot 139, commons, owner unknown. Accompanying Exhibit B, No. 2, referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Cir. Ct., South Dist. Missi.

I, Samuel W. Brown, assessor and collector of taxes in and for the city of Vicksburg, in the county of Warren, and State of Mississippi, have this day, according to law, sold the following described lots or parcels of land, to wit: Lots number one hundred and forty, (140,) one hundred and forty-one, (141,) and one hundred forty-two, (142,) all in square M, in a plat of lots laid off by S. S. Prentiss and others in front of the city of Vicksburg, for an assessment made thereon by a resolution of the board of mayor and council of the city of Vicksburg, passed on the 16th day of November, 1846, to pay for making 85 feet of

221 curb on Front street in front of the west side of said lots, and 85 feet of curb and gutter on Commons street, in front of the east side of said lots, as the property of W. H. Newbold and other claimants, for the amount of said assessment, to wit, the sum of one hundred and twenty-seven dollars and fifty cents, when Shepherd Brown and Joseph H. Johnston being the best bidders at the sum of one hundred and thirty-five dollars and thirty-seven cents, became the purchasers thereof; said sum being the amount of said assessment and expenses of sale. I, therefore, sell and convey said described property to said Shepherd Brown and Joseph H. Johnston, their heirs and assigns, forever.

Given under my hand and seal this 21st day of December, 1846.

SAMUEL W. BROWN, [SEAL.]

Assessor and Collector of Taxes in and for the City of Vicksburg.

THE STATE OF MISSISSIPPI,
City of Vicksburg:

Personally appeared before me, Miles C. Folkes, mayor of the city of Vicksburg, the within-named Samuel W. Brown, assessor and collector of taxes in and for said city, who acknowledged that he signed, sealed, and delivered the annexed and foregoing instrument of writing on the day and year therein stated, and for the purposes therein specified, as his act and deed.

222 Given under my hand and seal of office this 21st day of December, A. D. 1846.

[L. S.] MILES C. FOLKES, *Mayor.*

STATE OF MISSISSIPPI,
Warren County:

I, Edward B. Scarborough, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 3d January, 1849, whereupon I have made the same of record in Book V, pages 605 and 606.

Given under my hand and seal of office this 4th day of January, 1849.

[L. S.] E. B. SCARBOROUGH, *Clerk.*

Endorsed: Filed for record January 3d, 1849.
E. B. SCARBOROUGH, *Clk.*

Recorded in Book V, pages 606, 607.
E. B. SCARBOROUGH, *Clk.*

Accompanying Exhibit B, No. 2, referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Circ't Court South. Dist. Missi.

I, Samuel W. Brown, assessor and collector of taxes in and for the city of Vicksburg, in the county of Warren, and State of Mississippi, have this day, according to law, sold the following described lot or parcel of land, to wit: Lot number (139) one hundred and thirty-nine in
223 square M, in a plat of lots laid off by S. S. Prentiss and others in front of the city of Vicksburg, for an assessment made thereon by a resolution of the board of mayor and council of the city of Vicksburg, passed on the 16th day of November, 1846, to pay for making 25 feet of curb on Front street in front of the west side of said lot, and 25 feet of curb and gutter on Commons street in front of the east line of said lot, as the property of Brown and Johnston and other claimants, for the amount of said assessment, to wit, the sum of thirty-seven dollars and fifty cents, when George W. Johnston being the best bidder at the sum of forty dollars and eighty-seven cents, became the purchaser thereof; said sum being the amount of said assessment and expenses of sale. I, therefore, sell and convey said described property to said George W. Johnston, his heirs and assigns, forever.

Given under my hand and seal this 21st day of December, 1846.

SAMUEL W. BROWN, [SEAL.]
Assessor and Collector of Taxes in and for the City of Vicksburg.

THE STATE OF MISSISSIPPI,
City of Vicksburg:

Personally appeared before Miles C. Folkes, mayor of the city of Vicksburg, the within-named Samuel W. Brown, assessor and collector

224 of taxes in and for said city, who acknowledged that he signed, sealed, and delivered the annexed and foregoing instrument of writing on the day and year therein stated, and for the purposes therein specified, as his act and deed.

Given under my hand and seal of office this 21st day of December, A. D. 1846.

[L. S.] MILES C. FOLKES, *Mayor.*

Endorsed: Accompanying Exhibit B, No. 2, referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Circ't Court, So. Dist. Missi.

EXHIBIT "B, No. 3."

A CARD.—THE WHARF AND LANDING.

EDITOR—SIR: The corporation has been induced by a few interested individuals to set up a claim to the commons property which she had abandoned for more than twelve years. And the United States court at Jackson has granted to her retinue of legal counsel the privilege of showing whether she is entitled to be made a party to the pending suit or not. To prevent misapprehension on the part of the observers of this interesting contest, I wish to say that the wire-workers of
225 this farce have not gained the slightest advantage to justify the pitiful chuckling in which they indulged on hearing that the judges had courteously allowed a hearing, at some future day, of the merits of the claim set up; a claim which will be found as "baseless as the fabric of a vision," and as fruitless of advantage to my pursuers as it is baseless.

To my numerous friends I will simply say that I am still undismayed at the formidable host that seeks to wrong me of my rights and my bread; and thoroughly assured of the goodness and justice of my cause, I do not entertain the shadow of a doubt but that I shall triumph over oppression, injustice, and wrong in the end. Every step taken by my opponents reveals the fact that justice and the fair-handed maintainance of that which is due between honorable citizens to each other is not as much esteemed in certain quarters as charity might have supposed.

I wish it distinctly understood that, in common with every member of the party complainants in the case, I believe the commons should have belonged to the city, and had the city used due diligence, she
226 could have gotten their interests thirteen years ago by merely asking for them and paying the cost of the deeds, and then she could at least have recovered eleven-thirteenths of the whole property: or had she accepted my offer of the property last October, instead of taking counsel from her foes, she would have been reaping the fruits of a contract every judicious citizen would have approved.

I complain not of the city counsel for asserting their just rights. But I do deem it essentially oppressive and cruel for them to have sat still and given me no notice of their claim, until I had involved the property in trust deeds and mortgages, and incurred large liabilities in settling the titles, and then lending their mighty arm to men sworn to put me down, without the formality of a decent offer to pay me anything for ten years' labor, abridged to the compass of about twenty-four months in quieting the almost endless claims to the property.

But now I invite her to the tribunal, without a doubt of defeating proceedings so entirely devoid of justice.

Respectfully,

C. K. MARSHALL.

Endorsed: Exhibit "B, No. 3," referred to in C. K. Marshall's deposition.

"GILES M. HILLYER,
"*Com'r U. S. Circuit Court, South. Dist. Missi.*"

227 EXHIBIT "B, No. 5."

Articles of agreement made and entered into this 26th day of March, 1851, by and between Charles K. Marshall, of the city of Vicksburg, and State of Mississippi, of the one part, and Thomas Porterfield, of the same city and State, of the other part, witnesseth, that the said Marshall has leased and rented, and does hereby lease and rent, unto the said Porterfield, for the full period of ten years, commencing from this date, and for the purpose hereinafter mentioned, the following described property, to wit, all of the wharf and landing on the Mississippi River between the northern boundary of the city of Vicksburg and the original southern boundary thereof; and, also, that portion of the wharf and landing on said river lying and being south of the original southern boundary of Vicksburg, this day conveyed and transferred by John Bobb, jr., and wife and William Porterfield, to him, for the use of steamers of all kinds, excepting ferry-boats, and for transacting thereon a general wharf-boat business; the wharf-boat to lie between the north side of China and the south side of Clay streets, and no other boat of any description, except such as may be necessary for carrying on
228 the wharf-boat business, shall be permitted to lie between the north and south sides of China and Clay streets as aforesaid; said Marshall reserving, however, the excluse use and control of all of said wharf and landing (except that portion lying between the north side of China and south side of Clay streets) for the landing and use of flat-boats, ferry-boats, and all other water craft, except steamers navigating said river; said Marshall, to that portion of the landing and wharf conveyed and transferred to him by John Bobb, jr., and wife and William Porterfield, as above mentioned, warrants only such rights and title as they have warranted to him, and such as he has acquired, or may hereafter acquire, from William Vick, or by any purchase under execution against him, said Vick. Said Marshall agreed to have the houses west of Levee street, between Clay and China streets, removed, and the wharf and landing between said streets put in suitable and proper repair for a steamboat landing, without any unreasonable delay, and as early as he can. Said Marshall also agrees to proceed, as soon as practicable, to have the upper wharf-boat, now under the control of Fraisse and Rowe, removed from said landing, and to allow no
229 other wharf-boat than said Porterfield to lie within the boundaries first above mentioned.

It is distinctly understood, however, that said Marshall does not give or convey to said Porterfield any right to demand or collect from any steamboat or other water craft any toll or wharfage for landing at his, Porterfield's, wharf-boat, or any part of the wharf and landing first above described; he, said Marshall, hereby expressly reserves the exclusive right to demand and collect such toll and wharfage as hereinafter mentioned.

And the said Porterfield, for and in consideration of the premises, hereby promises and agrees to place the lower wharf-boat, called the

"Magnolia," forthwith between the north side of China and the south side of Clay streets, and keep her, or some other good and substantial wharf-boat, within said limits, during the continuance of this lease, and to keep the landing within said limits in good repair at his own expense, after it shall have been once put in repair by said Marshall.

Said Porterfield agrees to furnish a suitable and convenient office on the said "Magnolia," or such other wharf-boat as he may have within said limits, for the use and occupation of the agent or collector,
230 during the continuance of this lease, without any cost or charge to said Marshall therefor.

It is also agreed that said Marshall may, by himself or through his agent and collector, demand and collect of and from all regular packets touching at said wharf-boat or wharf and landing, a toll or wharfage of not exceeding five dollars for each trip, and may demand and collect of and from all other steamboats a toll or wharfage of three dollars or less for each landing; and the said Porterfield shall not, either directly or indirectly, obstruct or prevent, or endeavor to prevent, the collection of such toll or wharfage by said Marshall or his agent, provided that no toll or wharfage whatever shall be collected by said Marshall or his agents until the said upper wharf-boat, under the control of Fraisse and Rowe, as aforesaid, shall first be removed beyond the limits of the wharf and landing hereby leased to the said Porterfield as above mentioned.

And it is further agreed that if said Porterfield shall be lawfully evicted from the possession of said wharf and landing between the north side of China and the south side of Clay streets, before the expiration of this lease by William Lane, or any other person, this lease shall, from
231 and after such eviction, cease and be utterly null; and the said Porterfield may in such case immediately resume and be fully vested with all the rights and privileges which the said John Bobb, jr., and wife and William Porterfield, convey and warrant to said Marshall as aforesaid, and each party restored to such rights as he would have possessed, had this contract or lease never been executed.

In testimony whereof the said Charles K. Marshall and Thomas Porterfield have hereunto set their hand and affixed their seals, this day and year first above written.

C. K. MARSHALL. [SEAL.]

THOMAS his + mark. PORTERFIELD. [SEAL.]

STATE OF MISSISSIPPI,
Warren County, ss:

I, George K. Birchett, clerk of the chancery court in and for said county of Warren, do hereby certify the foregoing pages to be a true and complete copy of an original exhibit marked "B," as filed in this office as part and with the original bill of complaint of Charles K. Marshall vs. "The Mayor and Council of the City of Vicksburg," now pending in our said chancery court.

In testimony whereof I hereto set my hand and affix the seal
232 of said court, at office in the city of Vicksburg, this the 22d day of March, A. D. 1867.

[L. S.] GEORGE K. BIRCHETT,
Clk Ch'y Court.

Endorsed: Exhibit "B," No. 5, referred to in C. K. Marshall's deposition.

GILES M. HILLYER,
Com'r U. S. Circuit Court, So. Dist. Missi.

EXHIBIT "B," No. 6.

Flat-boats and wharfage.—No. 20.

An ordinance regulating the flat-boats landing, and the wharfage of flat-boats, rafts, &c., &c.

SECTION I. That the landing for flat-boats shall be, and is hereby established, between the north side of China street and the mouth of Glass Bayou, and the place for the landing of rafts, lumber, &c., shall be below the south side of South street and the north side of Depot street.

SECTION II. That hereafter all flat-boats and rafts landing at this city shall pay a wharfage tax according to the following rates:

For each flat-boat on landing	$2 00
Such flat-boat shall be entitled to lie without further charge for two days, and for each day thereafter, (except Sundays,) per day	50
No exception made for boats lying outside of those touching the landing.	
233 All empty flat-boats, sunk or afloat, shall pay in advance at the rate per week of	$1 00
All boats trading in rock, sand, wood, &c., for each week, in advance	1 00
All rafts for landing	1 00
" " " each day the lie at the landing	50
Lumber, wood, coal, rocks, and sand left on the landing, if not removed within a week, will be charged per day	50

Any person being the owner or agent of said boats, rafts, or goods and materials, who shall refuse to pay the aforesaid tax or wharfage, shall be fined in the sum of ten dollars, with costs, recoverable before the mayor's court of this city.

Ordained and published the 7th February, A. D. 1852. O. B., p. 350.

Flat-boats, &c.—No. 21.

An ordinance requiring an ad valorem tax to be levied on all flat-boats, keel-boats, barges, and other water craft wherein goods, wares, merchandize, and other property are or may be sold by retail within the limits of the city of Vicksburg.

SECTION I. That from the passage of this ordinance and thereafter, all flat-boats, keel boats, barges, and other water craft lying and trading at the landing in front of the city of Vicksburg, shall
234 pay the ad valorem tax assessed in the general revenue bill, on every one hundred dollars worth of goods, wares, and merchandize, produce and other property, which may be sold at the landing or within the limits of the city of Vicksburg, provided that said flat-boats, keel-boats, barges, and other water craft, shall be entitled to the privilege of lying and selling for two days from their first landing, free of this tax; and provided further that said flat-boats, keel-boats, barges, and other water craft shall have the privilege of selling their entire cargo at one sale, free of this tax.

SEC. 2. That the wharf and harbor master, or such agent as may be empowered by the board of mayor or council, to attend to and carry out the provisions of this ordinance, shall upon application of any captain, owner, supercargo or agent of any flat-boat, keel-boat, barge, or other

water craft, and upon payment to such wharf and harbor master, or other agent appointed as above specified by the board of mayor and council, of one dollar, as a fee to the city for the privilege of landing, issue to such captain, owner, supercargo, or agent a receipt for the said landing fee of one dollar, which receipt shall entitle said captain,
235 owner, supercargo, or agent to the privilege of selling at retail or otherwise, goods, wares, merchandize, produce, and other property for the period of two days from the date of the first landing of said boat or water craft at the landing of Vicksburg; and it is hereby distinctly declared to be the intention of the framers of this ordinance, that all retail or stationary flat-boats, keel-boats, barges, and other water craft shall be included in the provisions of this ordinance, and that it shall be the duty of the wharf and harbor master, or such agent as shall be in the employment of the city for the collection of wharfage and wharf taxes, to repair monthly on board of all stationary or retail flat-boats, keel-boats, barges, or other water craft, and under oath of the owner or owners thereof, take an assessment of the monthly purchases and sales of such boat or water craft, and collect the ad valorem tax specified in the general revenue bill for the fiscal year in which such collection may be made.

SEC. 3. That upon the expiration of the two days of free trade allowed to the captains, owners, supercargoes, or agents of flat-boats, keel-boats, and other water craft, as provided in the second section of this ordinance, it shall be the duty of all, or any such captain, owner, super-
236 cargo, or agent, as may intend to offer for sale, at the landing or within the limits of the city, any goods, wares, merchandize, produce, or other property, in any water craft, to make a declaration of such intention to the wharf and harbor master, or such agent as the board of mayor and council may employ in the premises, upon which the said wharf or harbor master or other agent shall repair immediately to the boat owned or in charge of such captain, owner, &c., and proceed to take an assessment of the value of such cargo of goods, wares, &c., &c., and when such is done, the said harbor master or other agent shall demand and receive of the said captain, owner, supercargo, &c., in gold and silver, or the acknowledged liabilities of the city, the ad valorem tax upon such assessment provided in the first section of this ordinance.

SEC. 4. That upon the receipt of such tax as provided in the first section of this ordinance, it shall be the duty of the wharf and harbor master, or other agent, to furnish such captain, owner, &c., paying said tax, a receipt therefor, and to obtain from the mayor of the city a license for such captain, owner, supercargo, or agent, to sell goods, wares, merchandize, produce, and other property on board his, her, or their flat-boat, keel-boat, barge, or other water craft, for twelve months from
237 the date of such license: *Provided, nevertheless*, That such license shall not issue to such captain, owner, agent, or other person until he, she, or they shall have first paid to said wharf and harbor master, or other agent, the tax for license provided to be paid by the merchants and traders of the city of Vicksburg, in addition to the ad valorem tax provided for in the first section of this ordinance.

SEC. 5. That if any captain, owner, supercargo, agent, or other person in charge of, superintending, or on board of any flat-boat, keel-boat, barge, or other water craft, at the landing of, or within the limits of the city of Vicksburg, shall presume to sell, or offer for sale, any goods, wares, merchandize, produce, or other property, after the expiration of the said two days, in less quantities than his, her, or their entire cargo or cargoes, without first having a license from the mayor, as stipulated in the

fourth section of this ordinance, such captain, owner, supercargo, agent, or other person shall, for every such offence, be subject to a fine in the sum of fifty dollars, recoverable by warrant before the mayor's court of the city of Vicksburg.

SEC. 6. That a failure or refusal by any captain, owner, supercargo, agent, or other person, of any water craft, to comply with
238 the stipulations of any portion of, and more particularly the 3d section of this ordinance, he, she, or they shall be subject to a fine of fifty dollars for every such offence, recoverable by warrant before the mayor's court of Vicksburg.

SEC. 7. That the neglect or failure of the wharf and harbor master, or other agent, to perform the duties required of him by this ordinance, shall render him liable to a fine of fifty dollars for every such neglect or failure, to be imposed by the mayor, upon proper evidence.

SEC. 8. That no license granted under this ordinance shall be assignable or transferrable, and any person who shall attempt by such means to evade the payment of the tax or license authorized herein to be levied, shall be fined in the sum of one hundred dollars, recoverable before the mayor's court.

SEC. 9. That the wharf and harbor master, or other agent, shall receive ten per cent. (see ordinance of 7th February, A. D. 1852, post, No. 22, wharf and harbor master to receive twenty-five per cent. commissions on all collections) on all collections under this ordinance, and that any regulations, resolution, or ordinance giving said wharf and harbor
239 master, or other agent, the privilege of collecting one dollar for himself from every flat-boat and other water craft landing at the city of Vicksburg, is hereby repealed.

SEC. 10. That this ordinance shall be in force from and after its passage, and that all ordinances or parts of ordinances conflicting with this ordinance be, and the same are hereby, repealed.

Ordained and published 7th June, 1852. O. B., pp. 351, 352, 353.

City landing, No. 50.

An ordinance to establish and regulate the city landing.

SEC. 1. That hereafter the regular steamboat landing for this city shall be, and is hereby, established between the north side of China and the south side of Clay streets.

SEC. 2. That all steamboats landing at this city shall pay wharfage according to the following rates:

All packets terminating their trips at this city, per week	$5 00
All steamboats passing and repassing, for each landing	3 00
All circus and exhibition boats, per day	5 00

SEC. 3. That if the captain or officer in command of any steamboat shall refuse to comply with the provisions of this ordinance, on conviction thereof before the mayor's court of said city, the said cap-
240 tain or officer in command of such boat shall be liable for and pay the sum of ten dollars, with costs of suit, and said boat shall be charged at the rate of ten dollars for each landing thereafter made, until the settlement of the litigated claim.

Ordained and published the 7th February, 1852. O. B., pp. 349–50.

STATE OF MISSISSIPPI, *Warren County:*

I, James H. Chappell, clerk of the probate court of said county, do

hereby certify that the foregoing ten pages contain a true and perfect copy of the following ordinances of the city of Vicksburg, viz: 1st. An ordinance regulating the flat-boat landing, and the wharfage of flat-boats, rafts, &c., &c., approved 7th February, A. D. 1852. 2nd. An ordinance requiring an ad valorem tax to be levied on all flat-boats, keel-boats, barges, and other watercraft, wherein goods, wares, merchandize, and other property are or may be sold by retail within the limits of the city of Vicksburg, approved 7th June, 1852. 3rd. An ordinance to establish and regulate the city landing, as fully as the same is of record in a leather bound volume, entitled "Charter and Laws of Vicksburg," revised, compiled, and published by authority of mayor and council. Printed at Vicksburg by M. Shannon, 1855.

Witness my hand and the seal of said court at office, Vicks-
241 burg, Mississippi, 22nd day of January, A. D. 1870.

[L. S.] J. H. CHAPPELL, *Clerk.*

Endorsed: Exhibit B. No. 6, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circuit Court South. Dist. Miss.

EXHIBIT "C, No. 1."

Opinion in relation to the first and second sections of the ordinance of the city of Vicksburg, published on the 7th day of June, A. D. 1852, and entitled "An ordinance requiring an ad valorem tax to be levied on all flat-boats," &c., &c.

The particular point upon which my opinion has been asked relates to the fee of one dollar assessed by the city upon flat-boats and other water craft for the privilege of landing, and the right of the city to levy such a fee or tax for its own use, and in view of the terms of the contract between the city and C. K. Marshall, dated 21st day of November, A. D. 1851.

The portions of this contract that bear on this question are these, viz: "And the said mayor and council of the city of Vicksburg hereby agree to collect and pay over to the said Charles K. Marshall, his legal
242 representatives or assigns, all the wharfages and rents derived from all the land and property above conveyed by said parties of the first part:" then follow certain provisions in relation to steamboats, &c., and the contract continues thus, viz: "The wharfage collected from flat-boats, rafts, barges, and other water craft, except steamboats, to be such as may be fixed by the mayor and council of the city of Vicksburg, provided the charges are not less than are at present customary; and provided also that this clause shall not be so construed as to prevent the said mayor and council from levying such tax or taxes on the sale of goods, wares, and merchandize, &c., as they may deem expedient," &c., &c. The contract continues in these words, omitting a paragraph in relation to coal yards, &c: "All the wharfages and rents shall be collected by a collector or collectors, who shall be nominated by said Charles K. Marshall, his representatives or assigns, and appointed and confirmed by the said mayor and council; nor shall said mayor and council be liable for any default of any collector. The collector or collectors shall settle with said Marshall, his representatives or assigns, weekly, and pay over to him or them all the wharfages collected from steam-
243 boats, flat-boats, and other water craft for that week." There are other clauses in relation to wharfages, &c., in this contract, all,

however, confirmatory of these quoted, and securing all the wharfages collected for the stipulated period to Mr. Marshall.

The first and second sections of the ordinance, supposed to be in conflict with the provisions of this contract, provide in substance as follows, viz: The first section levies an ad valorem tax on all goods sold on flat-boats and other water craft, but allows the privilege unconditionally of buying and selling for two days free of the ad valorem tax; and also allows at one sale the whole cargo be sold free of the tax. The second section empowers the wharf-master, upon the application of the captain, &c., of a flat-boat, &c., and the payment by such captain, &c., of one dollar as a fee to the city for the privilege of landing," to issue to such captain, &c., "a receipt for the said landing fee of one dollar, which receipt shall entitle said captain, &c., to the privilege of selling at retail or otherwise, goods, &c., for the period of two days from the date of the first landing of said boat or water craft at the landing of Vicksburg."

The third section begins with this phrase: "Upon the expiration
244 of the two days of free trade," &c. These are all the portions of this law which are considered as having any operation on the question proposed.

It must be observed at the outset that all the powers and rights of either side to this controversy must be controlled by the written contract between the parties. Whatever rights either party may have had prior to its execution are merged in that, and their present claims must be based on that.

Looking to its terrors then for our guide, and there is but little difficulty in the questions presented, the language of the contract is unambiguous and unmistakable.

By its terms the city is bound to collect and pay over all the wharfages from all the land and property to Mr. Marshall. She does not reserve to herself a vestige of right in that behalf. Language could not be more comprehensive and exclusive at the same time. The only right retained by her is the right "to levy a tax on the sale of goods." If the whole contract relating to this point is searched diligently, no other privilege or power will be found conferred on the city.

The question then is reduced to this simple one: is a tax imposed upon flat-boats for the privilege of landing and selling for two days, free
245 of tax, (and this is the most favorable construction to be put on the inconsistent provisions of the first and second sections of the ordinance,) a tax levied on the sale of goods? If it is, the city had the right to levy the tax for its own benefit, and the proceeds belong to the city treasury. If it is not, the city must collect the tax for the benefit of C. K. Marshall, and it belongs to him.

Is, then, a sum paid to exempt a flat boat from a tax on the sale of its goods, a tax levied on the sale of those goods? Is a tax for the privilege of selling free of a tax, a tax on the goods sold? To state the proposition is to answer it. He who buys the privilege of selling his goods free of taxation cannot be taxed for the sale of those goods. The two are inconsistent and impossible. The city has no right to sell the privilege of retailing without tax, for the simple reason that Mr. Marshall gave her no such right; for by so doing he would have sold the very thing that makes his property valuable to him. The whole and sole power of the city is to tax the merchandize sold; and so much of the ordinance as undertakes to do that is within the scope and terms of the power conferred on the city. All beyond that enures to the benefit of Mr. Marshall.

246 But independent of this clear view of the powers and rights of the city founded on her contract, the ordinance itself is so framed

as to render doubtful any right of the city to *to* the tax for free trade, if the city had the power to levy any such tax. The first section of the ordinance declaring that an ad valorem tax shall be levied, expressly and without condition or limitation, provides that all boats may sell for two days without paying this tax, and thus confers as a privilege and bounty this two days' exemption, called "free trade" in the third section of the ordinance. Now, the second section requires the captain to pay "one dollar for the privilege of landing;" upon which the wharf-master is to give a receipt for "the landing fee," which receipt is to give the privilege of selling two days free of tax. Is, then, this dollar exacted and paid for the "privilege of landing," or for the right to two days of "free trade?" Is it not obvious that the tax is imposed as a "landing fee" merely, when the privilege of "free trade" is conferred already, gratis, by the proviso of the first section, and when the ordinance says the one dollar shall be paid for the privilege of landing, and that
247 they shall have "free trade" only when they have paid "the landing fee?" In other words, is not this the obvious construction of both sections taken together: We give you leave to sell two days for nothing, but you shall not have this privilege unless you pay one dollar for landing?

If this be true, and it seems to me the only legitimate construction of the ordinance, then it is plain the city is attempting to collect a landing fee or wharfage for herself, in the face of her express agreement to do so for Mr. Marshall alone.

But if it be argued that this dollar was for both the privilege of landing and the right to sell two days free of tax, it will not in the least help the cause of the city, for she had not a shadow of a right for her own benefit to impose the tax for either; and if she had for the latter she certainly had not for the former, which was exclusively Mr. Marshall's.

That the city had the power to levy the tax is plain from the contract, which reserves to her the right to fix the rate of wharfage on flat-boats; but all the wharfages thus levied by the city are Mr. Marshall's.

I give it, therefore, as my deliberate and considered opinion that Mr. Marshall is entitled to all the tax fees of one dollar levied on flat-
248 boats, &c., under the second section of this ordinance, or which may be hereafter levied under that or any similar ordinance.

Vicksburg, April 27, 1853.

W. C. SMEDES.

Endorsed: Exhibit "C," No. 1, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court So. Dist. Miss'i.

EXHIBIT C, No. 2.

For the Sentinel.

WHY AND BECAUSE.

Mr. EDITOR: In your issue of Saturday, the 19th, I read the annual report of the finance committee among the proceedings of the city council. In that report the following statement occurs:

"The committee were informed that Mr. Riley's agent paid this balance (due the city, $7 00) to C. K. Marshall, who refuses to pay it over to the city treasurer."

I deem it due to myself to give the citizens interested in these mat-

ters an account of this affair. In the first place, then, Mr. Riley was my agent and collector, and observed my instructions. He collected, according to an ordinance of the city council, from each flat-boat, $1 00 wharfage for landing, and I instructed him not to pay that to the city treasurer; he did not, and I have not. But wherefore? For this good
249 reason: When I sold the landing to the city, I reserved the right to all the wharfages of every sort, as the following terms show: "And the mayor and council of the city of Vicksburg agree to collect and pay over to the said C. K. Marshall, his legal representatives or assigns, all the wharfages and rents derived," &c. Again, "The collector or collectors shall settle with said Marshall, his representatives or assigns, weekly, and pay over to him or them all the wharfages collected from steamboats, flat-boats, and all other water craft," &c. This agreement is dated November 21st, 1851.

On the 7th of June following, the council passed an ordinance providing "that when (see section 2d) any captain, owner, supercargo, or agent of any flat-boat, keel-boat, barge, or other water craft, upon the payment to such wharf and harbor master, or other agent, appointed as above specified by the board of mayor and council, one dollar as a fee to the city for the privilege of landing, he shall issue to such captain, owner, supercargo, or agent a receipt for the said landing fee of one dollar, which receipt shall entitle said captain, owner, supercargo, or agent to the privilege of selling at retail, &c.

The only question to be solved is this: What is the difference be-
250 tween a wharfage fee and a landing fee? I contend there is no difference; and as all wharfage fees belong to me, of course, all landing fees are mine. True, it is added, "such payment shall entitle" the payer "to the privilege of selling at retail;" but that was a mere addition to turn a period, for that is not the intention of the law. The first three or four lines of section 3rd show that it is not. It reads in these words, to wit: "Be it further ordained that upon the expiration of the two days of free trade allowed to the captains, owners, supercargoes, or agents of flat-boats," &c., provided for in the 2d section of this ordinance. In this section those two days are specially called "two days of free trade." But how can that be true if the "landing fee of one dollar" is a fee for a license to retail? There are other curiosities in these ordinances not necessary to mention now.

Before the passage of this ordinance the city had allowed their collector to collect one dollar as part payment for his services for issuing licenses to boats, watching the interests of the city, and acting as harbor master, but that was repealed. It never was a "fee for landing," if I understand it, and if it was, then I claim it, inasmuch as "all the wharfages shall be paid to C. K. Marshall," according to the con-
251 tract; which contract further says: "The wharfage collected from flat-boats, rafts, barges, and other water craft, except steamboats, to be such as may be fixed by the mayor and council of the city of Vicksburg, provided the charges are not less than are at present customary."

Very well; did the mayor and council fix the rates? To be sure. "And they are," say those who ought to know, "just what they have been for years past;" then, nevertheless, "all wharfage and landing fees," it is solemnly agreed, shall be paid, not to the city treasurer, but to the former owner of the landing. The council appointed a committee to confer with me on this subject many months ago, and it is as little as the finance committee could have done to have called for the reports o'

that committee before publishing the version of the question as it appears in their report. More anon.

Yours,

C. K. MARSHALL.

MARCH 22D, 1853.

Endorsed: Exhibit C, No 2, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Cir'et Court, South. Dist. Missi.

252 EXHIBIT D, No. 1.

CITY COUNCIL.

At a regular meeting of the board of mayor and council of the city of Vicksburg, held at the city hall, on Monday, March 1st, 1852: Present, N. G. Bryson, mayor, and Messrs. Crawford, Buck, Arthur, Woodman, Sparke, and Donovan, council. * * * *

Mr. Arthur offered the following amble and resolutions, which were unanimously adopted:

Whereas the wharf-boat Magnolia, kept for the landing of steamers, having been removed from the steamboat landing provided for and agreed upon in the late agreement and ordinances regulating the steamboat landing, without the consent, advice, or knowledge of the mayor and council; and whereas Mr. Marshall has notified the council that he will not consent to allow any change of position of said wharf-boat, under the penalty of a forfeiture of the contract made between him and this counsel, Be it therefore

Resolved, That the mayor be instructed to notify the parties owning or controlling the said wharf-boat to have the said boat returned to the place designated, between the south side of Clay and the north side of China streets, within forty-eight hours after notice of this reso-
253 lution; and if the same be not complied with the mayor is hereby instructed to employ counsel to obtain an injunction to prevent its use at any other point within the city, or any other wharf-boat for that purpose, and to prevent steamboats from landing at any other point within the city, and to ask in said bill of injunction that the contract or lease authorizing the establishment and maintenance of said wharf-boat or any other wharf-boat be declared forfeited and null and void, and be set aside.

I hereby certify that the foregoing extract, copied from the proceedings of the mayor and council of the city of Vicksburg as published in the Vicksburg Whig of March 6th, 1852, is a true and correct copy.

M. SHANNON.

OCT. 30, 1869.

Sworn and subscribed to this 26th day of January, A. D. 1870, before me.

GILES M. HILLYER,
Commissioner U. S. Circuit Court for South Dist. Missi.

CITY COUNCIL.

At a called meeting of the board of mayor and council of the city of Vicksburg, held at the city hall, on Friday, Feb. 20, 1852, at
254 7 o'clock p. m.: Present, N. G. Bryson, mayor, and Messrs. Crawford, Buck, Arthur, Woodman, and Donovan, council.

The mayor stated to the board the object of the meeting, whereupon

Mr. Buck offered a resolution. Mr. Crawford offered the following as a substitute:

Resolved, That the late agreement made between C. K. Marshall and the city in relation to the wharf and landing, provides that the steamboat landing shall be permanently fixed between the north side of China street and the south side of Clay street, and any change of it by any party without consulting the city council is in violation of said agreement, and this board will consider it an imperative duty to enforce the provisions of said agreement.

I hereby certify that the above is a true and correct extract copied from the proceedings of the city council of the city of Vicksburg, as published in the Vicksburg Whig, Feb. 24, 1852.

M. SHANNON.

OCT. 30TH, 1869.

Subscribed and sworn to this 26th day of January, A. D. 1870, before me.

GILES M. HILLYER,
Commissioner U. S. Circuit Court for Southern District of Mississippi.

(Endorsed:) Exhibit D, No. 1, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court, South. District Missi.

255 EXHIBIT D, No. 2.

VICKSBURG, *April* 7, 1856.

M. C. FOLKES, *Mayor*.

SIR: Your committee, to whom was referred the claim of C. K. Marshall for damages arising from the enforcement of the quarantine ordinance of 1855, beg leave to report that they have had the same under consideration, and find upon examination that Mr. Marshall addressed a letter to the mayor and council in 1854, urging them to establish quarantine, and saying that it was called for both by public opinion and by public necessity. He also signed a petition in 1855, asking the mayor and council to establish a rigid quarantine. Your committee cannot believe that Mr. Marshall asked them to establish an ordinance for the benefit of the whole city, which, if enforced, would take money out of the city treasury and place it in his own. They are therefore forced to the conclusion that the claim of Mr. Marshall against the city of Vicksburg has for its foundation the enacting of an ordinance asked for by Mr. Marshall, and which, he said, was called for by public opinion. For these and other reasons your committee report adversely upon the claim.

A. LEGRAND, *Ch'n.*

256 The above is a true copy of the original on file in my office.
Given under my hand and seal this 10th day of April, 1850.

MILES C. FOLKES, [SEAL.]
Mayor, &c.

(Endorsed:) Exhibit D, No. 2, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court So. Dist. Missi.

EXHIBIT E, No. 1.

To the MAYOR AND COUNCIL *of the City of Vicksburg:*

Your petitioner, Charles K. Marshall, respectfully states that on the 21st day of November, 1851, he conveyed to the mayor and council of the city of Vicksburg, without any pecuniary consideration received therefor, the wharf and landing in front of the original town of Vicksburg. By the terms of said conveyance it was stipulated that your honorable body should collect and pay over to your petitioner all the wharfage and rents derived from all the property therein conveyed for the full period of ten years, to commence three months after the removal of the upper wharf-boat, called Gov. Jones, then lying near the foot of Jackson street, which three months expired about the month of May, 1852.

It was further expressly stipulated in said conveyance that if
257 the right to collect wharfage should be suspended for any period by the intervention of third parties, the time of such suspension should be added to the ten years, so that your petitioner should actually receive the entire income from the property for the full period of ten years. And in case the right to collect wharfage was interrupted by the city, the property was immediately to revert to your petitioner.

At the time of said conveyance the property was incumbered by a deed of trust in favor of W'm Lum, and other creditors, and it was agreed that if all the incumbrances should not be fully paid off at the end of five years, of collection, from the first day of July, 1852, the city should retain the whole revenue from the property, and apply it to the payment of the debts secured by said deed of trust. All of which will more fully appear by reference to extracts from said conveyance filed herewith, and prayed to be taken as part of this petition.

Your petitioner further states that one of the notes in favor of the said W'm Lum, and now held by John A. Klein, for $3,306 66, is still unpaid. The amount, including interest, will be about $6,597 55 on the first day of next month.

Your petitioner further states that by quarantine regulations
258 established by the city, boats were prohibited from landing at the said wharf for a period of some two or three months in each of the years 1853, 1854, 1855, and 1858, and he was deprived thereby of the income of the property for an aggregate period of seven or eight months during those years.

And again, in 1861, after the commencement of the war a blockade of the river was established by the different belligerents; and your petitioner has never received any rents or wharfage of any consequence since.

Since the surrender of the confederate armies the city has taken possession of all said wharf and land, and has received all the income from it up to the present, amounting in the aggregate to at least $20,000, as he believes. Now, your petitioner submits that in equity as well as the plain letter and spirit of said deed, he is entitled to all the money received from said property during a period equal to the aggregate time of the existence of quarantine in the years aforesaid; and the city should be regarded as a mere trustee, holding the same for his benefit.

Your petitioner is desirous of dealing liberally with the city; but he wants at least some part of what is justly due him. He is willing,
259 therefore, and now here proposes, that if the city will pay and take up said note now held by said Klein, he will give a full acquittance and release of his claim to the fund received by the city as

aforesaid; that is to his right to remuneration or an extension of time on account of said quarantines.

He respectfully submits this proposition of settlement to your honorable body, and hopes you will deem it to the interest of the city to accept it.

CHARLES K. MARSHALL,
By MARSHALL AND MILLER, *Att'ys.*

(Endorsed:) Exhibit E, No. 1, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
U. S. Circ't Court So. Dist. Missi.

EXHIBIT E, No. 2.

To the MAYOR AND COUNCIL *of the City of Vicksburg:*

Upon the question submitted to us by your hon. body, we present the following opinion: By deed and contract entered into and executed by said city of Vicksburg and C. K. Marshall, on the 21st day of November, 1851, and recorded in the probate clerk's office, Book X, pages 480 and 481, it is expressly agreed that the said Marshall shall receive all
260 the wharfage and rents derived from the land conveyed to the city in said deed, and the city was to collect and pay over the same to said Marshall for a period of ten years, commencing, say from the month of May, 1852.

It was further agreed that if the right to collect wharfage was suspended for any period by the act of third parties, the time of such suspension should be added to the said ten years, so as to complete the full ten years in which the said Marshall should be the recipient of the wharfage.

It is claimed by said Marshall that for a portion of the years 1853, 1854, 1855, and 1858, amounting in all to seven or eight months, that the city prohibited boats from landing at the wharf, thus interrupting his receipts from the wharfage; and furthermore that before ten years under his contract had expired his opportunity to collect or receive wharfage was further interrupted by the blockade of the river in the late war by the two belligerents.

It is claimed upon the part of the city that in 1853 the wharf-boat for a period of several months was removed from the city, and the collection of wharfage interrupted, but that this was done with the consent of said Marshall. There is no record of this agreement on his part, nor
261 is it claimed that this change of the original contract was under seal; but that it was made in writing, and ordered to be filed and recorded in the mayor's office. As to the effect of such agreement, we think it clear that at a subsequent parol or written agreement, not under seal, cannot dispense with or vary an act covenanted to be done by a sealed instrument. So for the purposes of this opinion, we consider that no such modification of the original contract was ever made by said Marshall. Then, independent of that, what are the further liabilities and obligations of the city under the original deed above cited.

The deed was drawn with great precision and accuracy, and there can be no mistaking the letter of it, and there is as little chance to mistake its intent. It expressly states that it is the intention of the two contracting parties, The City of Vicksburg and C. K. Marshall, that the said C. K. Marshall shall receive without interruption the wharfage for ten full years, and that if by the act even of third parties, to say nothing of the act of

the city itself, the collection of wharfage should be interrupted, the period of its interruption should be added to the ten years to complete the full measure of his ten years, during which time he was to
262 receive wharfage. It is clear then that both from the express letter and spirit of the contract, that the city is obligated to complete the receipt of the wharfage to the said Marshall for a period sufficient to complete the term of ten years. It is for your hon. board to determine whether or not $6,597 55, the amount that said Marshall is willing to receive in compromise and final settlement of his claim against the city, would exceed the amount he would be entitled to by the collection of wharfage for a period long enough to complete the ten years. If this amount is not in excess of that, it is clearly to the interest of the city to accept the terms proposed. This should not be done unless all the mortgages or deeds of trust alluded to in said deed have been satisfied and cancelled, except the one named in the petition of said Marshall we are now considering.

We have examined this question with the care that is due to the interests involved, and are clearly of the opinion that upon the condition suggested, that if said Marshall will give a full acquittance and release of his claim against the city for and on account of wharfage, both for the period of the quarantine in the years 1853, '55, and '58, and also on account of the blockade of the river during the war; that the
263 city will save itself ruinous and profitless litigation by taking up the note now held by Mr. Klein, and thereby comply with the letter and spirit of its obligation.

Respectfully submitted.

MERWIN AND YOUNG.

(Endorsed:) Exhibit E, No. 2, referred to in C. K. Marshall's deposition.
GILES M. HILLYER,
Com'r U. S. Circ't Court, South. Dist. Miss'i.

EXHIBIT F, No. 1.

Proclamation.

By the president of the Confederate States of America.

Whereas, Abraham Lincoln, the President of the United States, has, by proclamation, announced the intention of invading this confederacy with an armed force for the purpose of capturing its fortresses, and thereby subverting its independence, and subjugating the free people thereof to the dominion of a foreign power; and, whereas, it has thus become the duty of this government to repel the threatened invasion, and to defend the rights and liberties of the people by all means which the law of nations and the usages of civilized warfare place at his disposal: now, therefore, I, Jefferson Davis, president of the Con-
264 federate States of America, do issue this my proclamation, inviting all those who may desire, by service in private armed vessels on the high seas, to aid this government in resisting so wanton and wicked an aggression, to make application for commissions or letters of marque and reprisal to be issued under the seal of these Confederate States.

And I do further notify all persons applying for letters of marque to make a statement in writing, giving the name and a suitable description of the character, tonage, and force of the vessel, and the name and place of residence of each owner concerned therein, and the intended

number of the crew, and to sign said statement, and deliver the same to the secretary of state, or to the collector of any port of entry of these Confederate States, to be by him transmitted to the secretary of state. And I do further notify all applicants aforesaid, that before any commission or letter of marque is issued to any vessel, the owner or owners thereof, and the commander for the time being, will be required to give bond to the Confederate States, with at least two responsible sureties not interested in such vessel, in the penal sum of $5,000; or
265 if such vessel be provided with more than 150 men then the penal sum of $10,000, with condition that the owners, officers, and crew, who shall be employed on board such commissioned vessel, shall observe the laws of these Confederate States, and the instructions to them for the regulation of their conduct; that they shall satisfy all damages done contrary to the tenor thereof by such vessel during her commission, and deliver up the same when revoked by the president of the Confederate States.

And I do further specially enjoin all persons holding office, civil and military, under the authority of the Confederate States, that they be vigilant and zealous in discharging the duties incident thereto. And I do, moreover, solemnly exhort the good people of these Confederate States, as they love their country, as they prize the blessings of free government, as they feel the wrongs of the past, and those now threatened in aggravated form by those whose enmity is more implacable, because unprovoked, that they exert themselves in preserving order, in promoting concord, in maintaining the authority and efficacy of the laws, and in supporting and invigorating all the measures which may be adopted for the common defence, and by which, under the blessing of Divine Providence, we may hope for a speedy, just, and hon-
266 orable peace.

In testimony whereof I have hereunto set my hand and caused the seal of the Confederate States to be affixed this 17 day of April, A. D. eighteen hundred and sixty-one.

[L. S.] JEFFERSON DAVIS.

R. TOOMBS,
Secretary of State.

In testimony that the foregoing is a full and complete copy of said paper, purporting to be a "proclamation by the president of the Confederate States of America," and to have been issued the 17 April, A. D. 1861, as the same appears now before me in a "Weekly Vicksburg Whig," dated Vicksburg, May 1st, 1861, I hereunto set my hand and affix the seal of chancery court this the 23d day of March, A. D. 1867.

[L. S.] GEO. K. BIRCHETT, *Clk.*

Important from St. Louis; entire suspension of business.

The following private dispatch has been received in New Orleans:

ST. LOUIS, *April* 26.

The express has been stopped. Send by special messenger. Don't trust the mails. All business has stopped. Can't ship anything.

267 STATE OF MISSISSIPPI,
Warren County, ss:

I, George K. Birchett, clerk of the chancery court in and for said county, in testimony that the above is copied full and complete from a

"Weekly Vicksburg Whig," dated Vicksburg, Wednesday, May 1st, 1861, and as the same now appears before me in said paper, have this day, March 23rd, A. D. 1867, set my hand hereto, and affixed the seal of our said chancery court.

[L. S.] GEORGE K. BIRCHETT, *Clerk.*

(Endorsed:) Exhibit F, No 1, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court, So. Dist. Miss'i.

EXHIBIT F, No. 2.

VICKSBURG, MISS., *Jan.* 10, 1869.

HON. SECRETARY STATE, *Illinois:*

ESTEEMED SIR: It is necessary in an important suit to prove by the military order-book of Ill. at what time in 1861 the Miss. River, at Cairo, was blockaded by the force sent there by the then acting governor of the State. May I solicit of you the favor of a copy mailed to my address in this city. I enclose stamps to pay postage.

Y'rs, C. K. MARSHALL.

268 ADJ'T GEN'L'S OFFICE, *June 23d*, 1869.

Respectfully returned to the Hon. E. Rummel, sec't'y of state. The enclosed are the only items on file in this office relating to the blockade of the Mississippi, at Cairo, in 1861, to which the letter of Mr. C. K. Marshall refers.

Very respectfully,

H. DIGLER,
Adj't Gen'l.

STATE OF ILLINOIS, OFFICE OF SECRETARY,
Springfield, June 24, 1869.

Respectfully returned to C. K. Marshall, of Vicksburg, whose attention is called to the enclosed copies of telegrams, &c.

EDW. RUMMEL,
Sec. of State.

STATE OF ILLINOIS, ADJUTANT GENERAL'S OFFICE,
Springfield, June 23d, 1869.

1. Telegr. to Governor R. Yates, d'd Washington, April 19, 1861:

"As soon as enough of your troops is mustered into service send a brig. gen'l with 4 regiments at or near Cairo.

(Sig'd.) "SIMON CAMERON,
"*Sec't'y of War.*"

2. Teleg. to Col. B. M. Prentiss, Cairo, d'd Springfield, April 24, 1861:

"The steamers C. E. Hilman and John D. Perry are about to leave St. Louis with arms and munitions; stop said boats, and seize all arms and munitions.

(Sign.) "RICHARD YATES,
"*Commander-in-Chief.*"

269 3. Teleg. to Gov. R. Yates, d'd Washington, May 7, 1861:

"Circular has been sent to collectors to forbid shipments intended for ports under insurrectionary control; stop such shipments from Cairo.

(Sign.) "S. P. CHASE."

The above is a correct copy of the items on file in this office pertaining to the blockade of Cairo in 1861, and has been issued at the request of the Hon. E. Rummel, sec't'y of state.

F. DILGER,
Adjutant General of Illinois.

(Endorsed:) Exhibit F, No. 2, referred to in deposition of C. K. Marshall.
GILES M. HILLYER,
Com'r U. S. Circ't Court South. Dist. Miss'i.

EXHIBIT F, No. 3.

VICKSBURG, *Dec.* 13, 1861.

Steamer Magnolia to the City of Vicksburg, Dr.:

To wharfage to this date..... $10

Received payment,

B. AND RICHISON, *Agent.*

(Indorsed on the face:) Working for gov't. Refused payment.
E. M. RICHISON.

VICKSBURG, *Nov.* 3*rd*, 1861.

Steamer Magnolia to the City of Vicksburg, Dr.:

To wharfage to this date..... $3

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Working for gov't. Refused payment.
E. M. RICHISON.

270 VICKSBURG, *Dec.* 15, 1861.

Steamer Scotland to the City of Vicksburg, Dr.:

To wharfage to this date—4 days at cotton land'g $20 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Working for gov't. Refused payment.
E. M. RICHISON.

VICKSBURG, *Nov.* 27, 1861.

Steamer Magnolia to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $3

Received payment,

BUTLER AND RICHISON, *Ag't.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

VICKSBURG, *Dec.* 30, 1861.

Steamer Manassas to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.

BUTLER & RICHISON.

VICKSBURG, *Dic.* 27, 1861.

Steamer Magnolia to the City of Vicksburg, Dr.:

To wharfage to this date—cot. laud'g..... $8 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.

BUTLER & RICHISON.

271

VICKSBURG, *Dec.* 29, 1861.

Steamer Magnolia to the City of Vicksburg, Dr.:

To wharfage to this date—wharf-boat..... $5 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.

BUTLER & RICHISON.

VICKSBURG, , 1861.

Steamer Ivy to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.

BUTLER AND RICHISON.

VICKSBURG, , 1861.

Steamer Tuscarora to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.

BUTLER AND RICHISON.

VICKSBURG, , 1861.

Steamer McRae to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $3 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.

BUTLER & RICHISON.

272 VICKSBURG, *Nov.* 29, 1861.

Steamer Belle Wood to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment,

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

VICKSBURG, *Nov.* 29, 1861.

Steamer Mellandon to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment,

BUTLER AND RICHISON, *Ag't.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

VICKSBURG, *Nov.* 29, 1861.

Steamer Baltic to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment,

BUTLER AND RICHISON, *Ag't.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

VICKSBURG, *Nov.* 29, 1861.

Steamer Red Rover to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment.

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

273 VICKSBURG, *Nov.* 29, 1861.

Steamer Jackson to the City of Vicksburg, Dr.:

To wharfage to this date—coaling..... $5 00

Received payment.

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

VICKSBURG, *Nov.* 29, 1861.

Steamer E. Howard to the City of Vicksburg, Dr.:

To wharfage to this date..... $5 00

Received payment.

BUTLER AND RICHISON, *Agent.*

(Indorsed on the face:) Refused payment. Government service.
BUTLER & RICHISON.

(Endorsed:) Exhibit F, No. 3, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court, So. Dist. Miss.

EXHIBIT G.

To the Citizens of Vicksburg:

GENTLEMEN: For more than thirty years an unhappy controversy has existed among us, growing out of the various interests and claims of the wharves and landings on the river fronting the city. Many years ago the city was in possession of all the wharf from South street to the northern boundary of the city. In an unfortunate hour
274 S. S. Prentiss et al. ousted the city from the possession, and they claimed and used it for their benefit over fifteen years. During which time the city council conceded their right and ownership, and regularly collected the taxes, as they did on all other real estate within the corporation limits. A lawsuit arose vs. Prentiss et al. for the property, in which the city took no part whatever. After many years of litigation, and when both parties were well-nigh exhausted, Mr. C. K. Marshall conceived the plan of closing out the suit by purchasing the interests of both parties, which was finally accomplished. Great opposition was felt at one man, whoever he might be, owning and controlling that property, because he might change at will the place of general steamboat landing, and thereby destroy the value of important property at one point to enhance the value of ground and lots at some other point. In the midst of this excitement Mr. Marshall's friends proposed to the council as a compromise that, he having purchased the property at a large price, should be allowed ten years in which to pay off the liabilities incurred, and reap any further advantage that he might therefrom. It was agreed in the instrument conveying the title to the city that if any interruption should occur in the regular course of the ten years, caused by third parties, the time so lost should be made
275 up to him. He claims a loss of time amounting to more than a year and a half, by frequent quarantines and by the late war. He also claims that he is entitled to the money collected by the city within the space of time next ensuing after the interruption had ceased, as he was not in possession. If his views are sustained by the courts, then, as the city has raised the charge of wharfage so that her revenues are now about $40,000 per annum, he would recover for eighteen months the sum of $60,000. Besides, it would cost the city a large amount to defend the suits. No one else would allow such a sum to be lost without an effort to recover it—especially as several thousand dollars of the original purchase money still remain unpaid, and, therefore, no one should ask him to give it up as a compliment to the public.

But put all this aside. Let it be supposed that the city is liable for nothing, and that nothing could be recovered; the question on its own merits is all we need consider. All the wharf lying between Henry street at Reading's old foundry, and South street, near the Prentiss House, except the merest fraction—a few feet—is now the property of private parties, and every foot of it can now, at a merely nominal
276 sum, become the property of the city with a perfect and unquestioned title.

Mr. Marshall purchased this property, which is nearly as extensive as that now used by the city, chiefly to prevent free wharf-boats from being placed thereon, and thereby stopping all collections at the city landing. Part of it was purchased at the instance of a committee of the city council in 1857, and has been held to this time. One piece of this landing was formerly claimed by private parties, who did put a wharf-boat on it, and charging no wharfage for landing, drew a large business to

it. This lay in front, in whole, or in large part of what is known as the Rhodes tract. When Mr. Marshall conveyed the old wharf property to the city in 1851, he voluntarily, and without one farthing's compensation, made a deed also to this property, which had cost him near $5,000, and which he purchased for the purpose of getting rid of a free wharf-boat, and without regard to the title. Some time afterwards the chancery court set aside the title under which Mr. M. obtained possession, and decreed the title of the wharf in front of the Rhodes property to the only heir of O. Rhodes, deceased, a lady who had recovered all
277 the lots, etc., known as the Rhodes property, on the ground of the mal-administration of the executor. The wharf was now thrown on the market, the parties remaining in the city endeavoring to find a purchaser. A purchaser was finally found, who bought it, and leased it Mr. Marshall, and offers it for sale with Mr. M.'s wharf, and he alone can make the title, and he alone is entitled to the proceeds of the sale. We are thus particular that prejudiced parties may understand the case.

In addition to the wharf, Mr. M. is also to convey to the city nearly all of the square lying between the Prentiss House and the river. Not less than four parties, all men of capital, have been examining the titles to this property, with a view to its purchase. Mr. M. offers it on better terms to the city than to any other party. He asks city bonds to the amount of $150,000, payable in ten years, bearing six per cent. interest. It may be objected that citizens will be taxed to pay this large sum. Not so. By judicious management, the wharf can be made to yield at least $50,000 per annum. Suppose it takes an average of $20,000 per annum of this sum to pay for the property, entirely aside from
278 every other question, then the city will have left at least $30,000, and each year the sum increases as the payments are discharged. So the property pays for itself, and costs the city not a dollar. Besides, it is all the same to the city whether it be paid in shinplasters or gold, as she only pays what she collects. Not one additional penny is levied for taxes in the case. On the other hand, if the property in question goes into private hands, it will be to their interest to draw all the steamers to their wharf, to do which they have only to make the wharf free, and establish an immense commission agency in connection therewith, and instead of $50,000 revenue collected per annum, the amount would scarcely be worth collecting that would go into the city treasury.

In addition to this, the centres of business would be broken up, the value of Washington street and other property would be greatly diminished, and new sources of bad feeling and distrust introduced, to avoid which it were better to pay a sum twice as large as is asked for the property.

When Levee street is properly laid out and straightened through, the wharf will be ample for all coming time, and being exclusively
279 under the control of the city council, can be rendered of the highest importance to our prosperity. The charter of the city provides that the citizens may, by a written petition, ask and require the city council to purchase such property, and issue city bonds or scrip, for the payment of the same.

This is now being done, and Judge Springer has been authorized to canvass the city and take the sense of the voters on the question. As citizens, and deeply interested in the future prosperity of the place, we give it as our deliberate opinion that the property ought to be now pur-

chased, and recommend the favorable consideration of the proposition to your cordial and unbiassed judgment.

Respectfully,

H. H. Miller.	W'm H. Stevens.
J. W. M. Harris.	Tho's Hackett.
N. H. Harris.	C. A. Manlove.
W. Brooke.	W. G. Bender.
Ben. Hardaway.	T. A. Marshall.
Sam'l W. Brown.	Tho's Rigby.
T. J. Randolph.	Jacob Peale.
J. Cowan.	W'm Beaty.
D. W. Moody.	J. Hornthall.
Laz. Lindsay.	B. Springer.
H. F. Cook.	

VICKSBURG, MISS., *July* 23, 1866.

280 (Endorsed:) Exhibit "G," referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court, South. Dist. Miss.

EXHIBIT A. N., No. 1.

To the honorable the judges of the circuit court of the United States, sitting in chancery, in and for the southern district of Mississippi:

The petition of the "Mayor and Council of the City of Vicksburg," a corporation chartered by the legislature of the State of Mississippi, and located in the said southern district of Mississippi, humbly complaining, represents unto your honors, that there is now pending in this court, on the chancery docket thereof, a suit wherein John Lane and others are complainants, and Sergeant S. Prentiss and others are defendants; that in and by said suit the said complainants seek and pray a partition between themselves and others, made defendants to the bill and various amendments thereof, of certain property within the corporate limits of the city of Vicksburg, known and described as "the commons and Levee street." Your petitioners are advised, and so believe and charge, that the property so claimed and sought to be divided really belongs
281 to them, and that they have such an interest in the property as entitles them to be made parties to the said suit, and to set up their title in order that the claim of petitioners may be adjudicated, and in any decree which may be rendered, their rights may be protected and secured. Your petitioners hereby tender their answer, and do not desire to delay the final decision of the cause. Petitioners are trustees for the benefit of the citizens of said city, and have no personal interest in the cause, other than that which every citizen has, and have not, until recently, been advised of their rights as set forth in their said answer, which they pray may be read as a part of this petition.

Petitioners pray that they may be made defendants and allowed to assert their title to, and interest in, the matters in issue in the cause; and as in duty bound, will ever pray, &c.

N. G. BRYSON,
Mayor of Vicksburg.

STATE OF MISSISSIPPI,
Warren County:

Personally appeared before me, the undersigned, a commissioner of the U. S. circuit court of the southern district of Mississippi, for the

county of Warren, N. G. Bryson, mayor of the city of Vicksburg,
282 who, being duly sworn, makes oath that the facts set forth in the foregoing petition are true, so far as stated from his own knowledge, and those derived from information from others he believes to be true.

N. G. BRYSON, *Mayor.*

Subscribed and sworn to before me, this 30th day of April, A. D. 1851.

H. H. MILLER,
U. S. Commissioner for Warren County.

Filed May 5, 1851.

W. H. BROWN, *Clk.*

(Endorsed:) Exhibit A. N., No. 1, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court So. Dist. Miss'i.

EXHIBIT A. N., No. 3.

Circuit court U. S., in chancery.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

"JNO. LANE ET AL. *vs.* "S. S. PRENTISS ET AL. } Motion on petition of Charles K. Marshall, May 24, 1850.

"And now, at this day, this cause coming on to be heard, and the court being sufficiently advised of and concerning the premises, upon the petition of Charles K. Marshall, it is ordered and decreed, and the court does hereby order, direct, and require the marshal of this dis-
283 trict to put him, said Charles K. Marshall, in possession forthwith of all that part of the property in the pleadings mentioned, consisting of the wharf and landing on the Mississippi River, in front of the city of Vicksburg, situate, lying and being between Grove street, in said city, and Glass Bayou, at the northern or upper part thereof."

A true copy from the minutes—teste:

W. H. BROWN, *Clk.*
P'r CHAS. H. ROGERS, *D. C.*

MAY 27, 1850.

(Endorsed:) Circuit court U. S., so. dist. of Miss. Jno. Lane et al. vs. (copy of order) S. S. Prentiss et al. Marshal's fees. Service on 12 occupants on said premises, $24 00; mileage, $5 00; ent. and return, 75 — $29 75.

Received 27th May, 1850.

FIELDING DAVIS,
Marshal So. Dist.

Duly executed the 27th May, 1850, by delivering possession of the within-named and described property to the plaintiff, Charles K. Marshall.

FIELDING DAVIS,
Marshal So. Dist. Miss.

Exhibit A. N., No. 3, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court South. Dist. Miss'i.

284 EXHIBIT A. N., No. 4.

JOHN LANE ET AL.
vs.
S. S. PRENTISS ET AL. } In chancery.—November term, 1850.

Upon motion of Charles K. Marshall, by his attorneys, it is ordered that the receiver in this cause be required to deliver to him, said Marshall, the possession of the said lots number 106, 107, 132, 133, 134, 135, 136, 137, 138, 119, and 120, as known and designated on the plats of lots laid off by the S. S. Prentiss and others, in front of the city of Vicksburg; and also all that portion of the said commons, including wharf and landing, allotted to the said defendants, John I. Guion and Judson P. Harrison, and so much thereof as has been sold and conveyed by the said defendants, William S. Bodley, to Rufus King, and by him sold to the said Charles K. Marshall, and that the receiver as to all of the aforesaid property ordered to be delivered up to the said Marshall be, and he is hereby, discharged.

(Endorsed:) 135. John Lane et al. vs. S. S. Prentiss et al. Order to deliver property to C. K. Marshall. Ent'd on minutes Nov. 13th, 1850. W. H. Brown, cl'k. Exhibit A N, No. 4, referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court South. Dist. Miss'i.

285 EXHIBIT A. N. N.

Lease to J. K. Yerger et al.

Memorandum of an agreement between Charles K. Marshall, of the city of Vicksburg, of the first part, and John K. Yerger, Sam'l Lum, C. Fraisse, O. O. Woodman, and John A. Klein, of the second part, witnesseth:

That whereas the party of the first part is now in the possession of, and lawful owner and holder of, the following described property, to wit: All that portion of the wharf and landing in the city of Vicksburg and county of Warren and State of Mississippi, lying between the mouth of Glass' Bayou on the north and Grove street in said city on the south, the possession of which said property has this day been delivered by the marshal of the United States for the southern district of Mississippi to said party of the first part:

And whereas the said parties of the second part are desirous, on the terms and conditions hereinafter named, to lease and to farm let from the said party of the first part, the following described portion of said property, on the terms and conditions hereinafter named:

Now, therefore, this agreement further witnesseth, that the said party of the first part has this day leased and to farm let to John K. Yerger, one of the parties of the second part, all that portion of the said
286 wharf and landing described as follows, to wit: Beginning at a point on the Mississippi River one hundred and fifty feet from the north side of Jackson street, and running thence with the Mississippi River southerly six hundred feet, according to the plat of said city, at and for the space of six months from this date, to be computed until the same shall be completed and ended. And the said party of

the first part further agrees, at the expiration of the said six months, to renew this lease for six months longer on the like terms and conditions hereinafter named, upon the full compliance of said parties of the second part with all the terms and conditions of this lease by them to be performed and fulfilled; but at the expiration of said six months it shall be, and is hereby declared to be, in the discretion of the party of the first part to renew this lease, or change, alter, or modify the terms thereof.

In consideration of which said lease on the part of the party of the first part, the parties of the second part hereby agree and bind themselves to pay to the party of the first part, according to a tariff of charges to be hereafter fixed and published by the party of the first part, the prices fixed by the said party of the first part for each and every species of steam craft that may be included in said tariff,
287 and which may, during the period of this lease, land at the landing herein leased; said sums to be paid to the said party of the first part at the expiration of each and every week from the commencement of this lease, on the demand of the said party of the first part; provided, however, that said parties of the second part shall not be liable to pay for any steamboat that shall have landed at the lower wharf-boat in the first instance, before landing at the landing herein named. And it is further agreed hereby, that if the said parties of the second part do not pay at the end of each and every week the prices aforesaid, fixed as aforesaid, for each and every boat so landing as aforesaid, at the landing herein specified as aforesaid within the said week, the party of the first part shall immediately distrain for the same, and subject the wharf-boat and its apparatus to the satisfaction thereof.

(D.) And the said parties of the second part hereby bind themselves and each of them, at the expiration of this lease according to its terms, to deliver to the said party of the first part, his heirs and , the said property herein described.

And the said party of the first part hereby binds himself to lease
288 the lower wharf in said city on the same terms and conditions with those herein stipulated, except as to the necessity of distraining weekly; and further binds himself in any renewal of this lease to give the parties of the second part hereto equal rights and privileges with those extended to the lessees of the lower wharf-boat.

It is further agreed by and between the parties hereto, that the parties of the second part shall not permit either keel-boats, flat-boats, or other water craft except steamboats, to land at the landing herein described; and if they do so, that the said party of the first part shall have the privilege of collecting wharfage from them in the same manner as if this lease had not been made.

It is further hereby agreed between the parties hereto, that the said Fraisse, Woodman, Lum, and Klein do not hereby become individually liable for the payment of said wharfages; but only to the extent of their interest in the boat now lying as a wharf-boat on said landing, or any other boat that may hereafter be put during this lease on said landing.

It is further hereby agreed between the parties hereto, that upon the breach of any of the terms and conditions of this lease by said parties of the second part, this lease, in the discretion of the said party of
289 the first part, may be declared by him null and void, and he shall have the right and privilege of re-entering upon said property.

It is further hereby agreed between the parties hereto, that the said parties of the second part may terminate this lease upon one week's no-

tice to said party of the first part, at any time they or said Yerger may desire.

In witness whereof the parties of the first and second parts have hereto set their hands and seals in duplicate this 27th day of May, A. D. 1850.

C. K. MARSHALL. [SEAL.]
JOHN K. YERGER. [SEAL.]
SAM. LUM. [SEAL.]
CESAR FRAISSE. [SEAL.]
O. O. WOODMAN. [SEAL.]
J. A. KLEIN. [SEAL.]

Witnesses:
W. C. SMEDES.
W'M LUM.

(Original.)

(Endorsed:) Exhibits A. N. N., referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r U. S. Circ't Court, South. Dist. Miss'i.

EXHIBIT A. R.

(*Copy.*)

VICKSBURG, *June* 1*st*, 1857.

Rev. C. K. MARSHALL:

DEAR SIR: By your request I inclose the report of A. Burwell, esq., acting attorney for the city; and also a proposition as chair-
290 man of the special committee appointed to act in relation to your proposition for the purchase of the city landing and other property therein embraced.

Should you be disposed to make to the mayor and council of the city of V'burg warrantee and quit claim deeds for all the property conveyed in your deed of 1851, with all the obligations therein existing, and also with the propositions under the report of A. Burwell, esq., which report is herewith enclosed, and further that you make a warrantee deed to all the property fronting on the river, lying south of the original survey of the city of V'burg, and contained in your proposition to the mayor and council of this city on the 8th and 14th of April, it being understood that the claims of the heirs of Levi Mitchell are likewise to be conveyed by you; then, and these conditions being complied with, I, as chairman of the special committee on the part of the city council, will recommend to that body the purchase of the property above recited, on the terms and for the amount which you have heretofore proposed.

I am, very respectfully, your ob't serv't,

G. P. CRUMP,
Ch. Committee on City Landing.

(Endorsed:) Exhibit A. R., referred to in deposition of C. K. Marshall.

GILES M. HILLYER,
Com'r Circ't Court, South. Dist. Miss'i.

291 And on the final hearing of this cause the following depositions of witnesses on behalf of the defendants were introduced and read to the court, to wit:

Deposition of A. Auter.

In circuit court of U. States, southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF VICKSBURG. } In equity.

Interrogatories to A. Auter, on behalf of defendant in this cause, which, with any cross-interrogatories, to be put, may be answered before a com'r of U. S. cir. court; notice and other formalities waived.

SIMRALL AND YOUNG,
Sol's for Defendant.

Interr'y 1. Were you a member of the city council of Vicksburg in 1862, previous and subsequent thereto, and for what years?

Int. 2d. State your age, residence, and occupation; what acquaintance you have with the parties to this suit.

Int. 3d. Where has C. K. Marshall and family resided continuously since 1865, and for many years prior thereto, and where do he and they now reside and have a domicil?

Int. 4th. Did you ever see the contract of compromise made be-
292 tween said C. K. Marshall, in 1852, or about that time, in reference to the property in front of the city; are you acquainted with the property?

Int. 5. When did the term of ten years allowed by said contract to Mr. Marshall expire? Did Marshall have possession of said property and receipt of its wharfage revenues after the expiration of the term; and for how long?

Int. 6. Did said Marshall give up or surrender said property to the city of Vicksburg after the expiration of the ten years? If so, state when.

Int. 7. Did you ever have a conversation in 1862, or about that time, with said C. K. Marshall about the city landing, its possession, and what the city had done or would do in respect to the same? State fully what was said in said conversation, and especially by Mr. Marshall.

Int. 8. Did Mr. Marshall, at the time referred to in last interrogatory, complain that the city or its council had not complied with its contract with him, or state that he had claims against the city for damages or compensation on account thereof? State fully on these points.

Int. 9. Did said C. K. Marshall, by his agents, receive the
293 wharfage during the term of his 10 years under the contract? Did he not appoint the agent to collect the same?

Int. 10. Whilst you were member of the council, did said Marshall prefer a claim for time lost by quarantines or for the time of blockade?

Int. 11. How many quarantines were there from 1852 to 1862, inclusive, and what was the duration of each of them? Did or not Marshall petition the council to establish such quarantines? Was wharfage collected whilst they were in existence, and by whom? What effect, if any, did the quarantines have on wharfage income? What percentage, if any, did the quarantines interfere with the landing of water craft?

Int. 12. Did the city have in force any regulation or ordinance that interfered with the wharfage dues or its collection during Marshall's term of 10 years? If it did, state what such ordinance was.

Int. 13. Did the council hold business meetings in 1862; if yea, how often?

Int. 14. Was there a tax on flat-boats for selling their goods during Mr. Marshall's term of 10 years, or any part of it? If so, what was the tax? Did this interfere with Mr. Marshall's wharfage tax on
294 such boats? Was Mr. Marshall's tax collected the same as if such city tax had not been imposed and collected?

SIMRALL AND YOUNG,
Sol's for Def'ts.

Cross-interrogatories.

1. Did not complainant leave Vicksburg in 1861 and go to the Virginia army; and was he not absent from Vicksburg from that time till after the surrender of Gen'l Lee's army, in April, 1865, with the exception of a brief visit home in 1862; and did he, after 1861, or after the establishment of the blockade by the U. S. government, give any attention to the collection of wharfage?

2. Did not steamboats cease, or generally cease, to run as regular traders or carriers on the Mississippi River after the establishment of blockade; and what proportion of all the boats which had been previously employed on the Mississippi River continued to do business after that time?

3. Were not all the boats, or nearly all of them, running on the lower Mississippi to the port of Vicksburg, after 1861, in the employ or service of the confederate government; and would it have been practicable to have collected wharfage of boats so employed?

295 4. If you speak of any conversation with complainant in 1862, touching the landing, was it not merely casual, entirely unofficial, during a brief visit by him to Vicksburg; and did he in such conversation make, or attempt to make, any formal surrender or relinquishment of any property he owned or right he had?

5. When and where, and in whose presence, did such conversation occur; and was any consideration or compensation of any kind, and, if any, what, made to complainant for the release of his unexpired term in the wharf? Did you not understand complainant to mean merely that that was not the proper or a suitable time for him to settle the question of what his rights in the landing or the further use of it were?

6. Did you ever read, and are you sure you are acquainted with, all the ordinances passed by the mayor and council of Vicksburg, touching the wharf and landing; and are not all that you have read susceptible of being understood without explanation; and do they not explain their own meaning quite as well as you can explain them? If, in your answer to the direct interrogatories, you undertake to explain any ordi-
296 nances of the city, please refer to the date of their passage, and the page of the book of ordinances where they can be found.

7. How many meetings of the city council did you attend in 1862; when were they held; give the date of each meeting, and who were present at each; and whether any other meeting was held after the first bombardment of the city by the federal fleet?

T. A. MARSHALL,
Sol. for Compl't.

In the cir. court of the U. S. for the south. dist. of Mississippi.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

The deposition of Capt. A. AUTER, a witness for the defendants in the above-named cause, taken before Laz. Lindsay, U. S. commissioner for said district and State, at his office in Vicksburg, Miss., by agreement of the parties by their atto's hereto annexed, and on the interrogatories and cross-interrogatories hereto attached.

The said witness being produced, sworn, and examined, deposeth and saith in answer to said questions as follows:

Ans. to 1st. I was a member of the council in 1861 and 1862.

Ans. to 2nd. My age is 65 years; residence, Vicksburg. I
297 keep a boarding-house at this time, and I know the parties to this suit.

Ans. to 3rd. I have never known him to reside in any other place than Vicksburg.

Ans. to 4th. I have seen the contract and am acquainted with the property.

Ans. to 5th. I cannot say positively whether the contracts expired in 1861 or 1862, but think it was in 1861. Mr. Marshall had possession of the property and received the wharfage, I think, for about four weeks after his term expired.

Ans. to 6th. About four weeks after his term expired, I, as chairman of the landing committee, called upon Mr. Marshall to learn his views in regard to the landing. He told me that his term had expired and that he had no more to do with the landing.

Ans. to 7th. I cannot say more than I have said. He surrendered the landing to me as chairman of the landing committee.

Ans. to 8th. Mr. Marshall said to me that the city had collected a hospital tax from flat-boats amounting to about $1,800 00; this he claimed rightfully belonged to him, and this was all he did claim.

Ans. to 9th. He did receive the wharfage for the term of ten years, and he did appoint the agent to collect it. I paid his agent flat-
298 boat wharfage for about eight years of that time.

Ans. to 10th. I never saw any paper before the council to that effect.

Ans. to 11th. I do not know how many quarantines there were. I cannot answer any other parts of this question.

Ans. to 12th. I do not recollect any ordinance that conflicted with his rights.

Ans. to 13th. There were some business meetings, but I do not know how many.

Ans. to 14th. There was a State or city tax upon all sales of goods at the landing. I do not recollect what it was. It did not interfere with Mr. Marshall's collection. His tax was collected just the same as if such State or city tax had not been collected.

Cross-examination of A. Auter.

Answer to 1st x. He went to Virginia, but he was in Vicksburg after his term expired, and at the time of the conversation as stated in answer to direct interrogatory. I do not know what attention he gave to the

collection of wharfage after the blockade was established, but he was in possession of the property until his term expired.

Ans. to 2nd x. Very few boats were running after the blockade was established.

299 Ans. to 3rd x. Boats ran freely until after the surrender of New Orleans in 1862; after that most of the boats were in the employ of the confederate government and paid no wharfage.

Ans. to 4th x. My conversation with him was, on my part, as a member of the city council and chairman of the landing committee; this he knew, and as such he stated to me he had no further rights or ownership.

Ans. to 5th x. The conversation occurred on the landing and no one was present. No compensation was tendered or claimed. He did not make any remarks about his rights, but relinquished them all to the city.

Ans. to 6th x. I have not referred to any city ordinances or attempted to explain any.

Ans. to 7th x. I cannot say how many meetings were held. I never attended any meeting of the city council except at the city hall. Cannot say whether there were any meetings held after the first bombardment.

A. AUTER.

I, Lazarus Lindsay, U. States commissioner as aforesaid, do hereby certify that A. Auter, the witness who signed the foregoing deposi., was by me first duly sworn to speak the truth, the whole truth, and

300 nothing but the truth, in reply to the int'ys and cross-int'ys hereto annexed in the cause aforesaid; and that said deposition was reduced to writing and signed by him in my presence, at my office in Vicksburg, Miss., this 13th Nov., 1869.

LAZ. LINDSAY, *U. S. Com'r.*

Com'r fee $10 00.

(Endorsed:) 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of A. Auter for defendants.

Filed and opened in open court Nov. 18, 1869.

GEO. T. SWANN, *Clk.*

Deposition of N. G. Bryson.

In cir. court of U. States, southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Interrogatories, on behalf of defendants, to N. G. Bryson, which, with any cross interrogatories, may be answered before any U. States cir. court com'r, notice and other formalities waived.

Int. 1. Are you acquainted with the parties to this suit? How long have you known complainant, C. K. Marshall? Where has he and family resided and had domicil for last 20 years? Where has he and they continuously resided since 1865? Did complainant ever change

301 his residence to another State? If yes, when, and to what place? Are you cognizant of the subject-matter of this suit?

Int. 2d. Were you ever mayor of city of Vicksburg? If so, when, and during what years?

Int. 3d. Do you know anything of a compromise agreement, made in 1852, or about that time, between said Marshall and the city of Vicksburg in reference to the wharf landing? If yea, state who first mooted or moved to make the agreement; said Marshall or the city. State all the circumstances and inducements and reasons for making the agreement. Was Marshall anxious or otherwise for its accomplishment? Did said compromise meet with opposition in the council or was it unanimous?

Int. 4. After said agreement was made did the city council pass any ordinances in reference to wharfage? State their purport. Was complainant aware of the import of such ordinances at the time of their adoption? Did he approve or disapprove them?

Int. 5. State all you know about fixing the wharfage on packets at $5 00 per week instead of $5 per trip. To what packets was that intended to apply? Why such appointment of wharfage? Did Marshall approve or disapprove the same? Did Marshall apply to
302 the council or mayor to change the regulation whilst you were in office?

Int. 6. Who collected wharfage during Marshall's term of 10 years: himself and agents, or city officials?

Int. 7th. Would the city council in 1852 have passed any ordinances, or prescribed any wharfage regulations, varying the contract between himself and city without Marshall's consent and approval? Was he not often before the council in 1852, whilst the ordinances were being considered, to carry out the contract between himself and city, and for what purpose was he before the city council?

Int. 8. What was the wharfage tax on flat-boats? Was there any city tax on such boats in addition to the wharfage? If yes, what was it, and for what purpose imposed? State fully.

Int. 9. During your administration as mayor, did Marshall complain that the city had made wharfage, or other ordinances, prejudicial to him under his contract?

Int. 10. What officers, if any, did the city have, having duties on the landing, connected with water craft, during Marshall's term of 10 years, and what were their duties? Did such duties conflict with Mar-
303 shall's right to collect wharfage?

Int. 11. What quarantines were there between 1852 and 1862, inclusive? What was their respective duration? Was wharfage collected of boats or other craft during quarantine, and by whom, and for whose account? To what boats did quarantine regulations apply? What effect, if any, did quarantine regulations have on quantum of wharfage receipts?

Int. 12. Do you know anything about the surrender by Marshall of the landing to the city after expiration of his term? If yes, state all you know about it. Do you know anything of a written surrender of said landing? If yes, state all you know about it.

Int. 13. In 1852, or other time, did Marshall apply for modification of his stipulations with the city, in the compromise agreement with the city? Were such modifications made? State in reference to Gov. Jones. Did city advance money to Marshall, (that she was not bound to,) to enable him to carry out the contract of compromise? If yes, state for what, and the amount. And has the same ever been paid back to the city?

Int. 14. Did Marshall comply with his contract in reference to paying off the debts on the landing property in the form of liens? Have such debts been yet fully paid off by him?

304 Int. 15. What were the wharfage revenues per annum during Marshall's term of 10 years? State as near as you can.

Int. 16. What became of the city records in 1862? Have any of them ever been lost? if so, how?

SIMRALL AND YOUNG,
For Def't.

Cross-interrogatories to N. G. Bryson.

1. Do you know of C. K. Marshall going to Louisiana in 1866 or 1867, and claiming a domicil and citizenship there? and do you know of himself and family having subsequently taken boarding at the family residence with Col. J. H. Woolfolk and wife, as non-residents of Mississippi?

2. Did not the landing committee in 1851 enlist the friendly services of A. B. Reading, as a mutual friend of both parties, to broach the subject of compromising and settling the wharf controversy to Mr. Marshall, and did Mr. Reading always assert that he negotiated the preliminaries of the settlement for said committee?

3. If the compromise was not unanimously approved by the city council, did not Mr. Arthur oppose it because he believed Mr. Marshall could not pay for, and the city eventually get it of his creditors on better terms?

305 4. Do you know if complainant corrected the printing of the ordinances after they were adopted? Did he not soon after their passage and publication denounce the wrong done him by the council as being done the very night the ordinances were passed?

5. After the ordinances were passed and published, fixing the wharfage at $5 00 per week, instead of $5 00 each per week, on the Yazoo River packets, do you know of any offer to make the matter fair and equal by giving to Marshall's agent or collector the office of collector of the tax on the sale, in flat-boats, of goods, wares, and merchandize, so as to reduce the expense of collections to be made by Marshall? How many Yazoo packets made over one trip per week from 1851 during the period of your office as mayor? Is it reasonable to suppose that complainant, in the then straightened condition of his finances, would have voluntarily given away forty or sixty dollars per month for no consideration whatever?

6. Does not the ordinance referred to in the 8th direct interrogatory explain the object of its passage? Did not Mr. Marshall employ Wm. C. Smedes and others to remonstrate with the councilmen of the city against the said ordinance; and did not such legal counsel pre-
306 pare and lay before the board a written remonstrance? And did not the city council take from Mr. Marshall's collector of flat-boat wharfages the office of collector of the ad valorem tax on goods, wares, and merchandize sold at the wharf on boats, because said Marshall required his collector to pay to him the sum of $7 00 wharfage, collected as such from flat-boats, over and above the wharfage collected for said Marshall, but which $7 00 the city claimed? Can you state the purport of complainant's published "cards" on this subject at the time?

7. State if the mayor and council had authority to collect wharfage at the quarantine grounds, and if they could and did authorize C. K. Marshall, or his agent, to collect the wharfage there. Were not all boats "ascending or descending the Mississippi River" (City Laws, pg. 137) cut off from landing alike? If an exception was made in 1855, (page 166,) was it not to allow them to land at the foot of Depot street, a private wharf with which the city had nothing to do? And was not

the first case of yellow fever developed in this city in 1858 taken from a steamer descending the river? Did you ever compute and compare the wharf revenues of several years of quarantine and epidemic with years of health, so as to know the losses incurred by suspended collections?

307 8. If you say you knew of complainant surrendering the property without seeking or designing to seek for indemnity for lost time, state how you came to know it, when and where you met said complainant, and why he was induced to give up so large a share of lost time for nothing; and state if he had not been unable to pay his debts, and, especially, the money due for the purchase of the wharf in question.

9. Were you not informed when the scrip or money referred to in the 13th direct interrogatory was issued, that it was not to pay for the "Governor Jones," as the wharf-boat, nor for the benefit of C. K. Marshall, though nominally to him? And was it not to effect a side issue arising out of the final settlement of the affairs of Fraisse and Rowe, as government mail agents, and to cover certain claims for mail contract, city taxes, or wharf pavements?

10. If Mr. Marshall failed to comply with his agreement to pay the mortgage debts on the wharf, was not such failure due to the fact that the landing committee induced him to spend large sums of money in purchasing the lower wharf or landing not owned by the city, or himself, which was afterwards dropped on his hands by said committee, involving him in a heavy debt?

308 11. Did the mayor and council of Vicksburg ever have any other claim of right or title to the "commons," including the wharf, than such as was derived from Newet Vick, sen'r, or John Lane, as administrator of his estate, until they obtained their right under said C. K. Marshall? If you say they did, when, and how, and from whom was it derived?

12. At what time was the "Gov. Jones" removed from the upper landing, and when did complainant's term of ten years under his contract with the city begin to run?

13. Did not the mayor and council of Vicksburg, after the decision of the high court of errors and appeals in the case of Vick and Rapplege vs. The Mayor and Aldermen of Vicksburg, rendered at the January term, 1837, and reported in the first volume of Howard's Reports, against the city, treat and recognize the commons and wharf as the private property of the said Vick and Rapplege, and those claiming under, and levy and collect taxes on it as private property, and from time, order gutters and pavements to be made upon it as private property; and have it sold for non-payment of taxes, and have a portion of it, between Jackson and Main streets, condemned under writs of ad quod damnum for public use; and did they not continue to treat

309 it as private property, until they filed their petition in 1851, to be made a party to the suit of John Lane et al. vs. S. S. Prentiss et al., in the United States circuit court for the southern district of Mississippi?

14. Did the mayor and council of Vicksburg take any steps to be made a party to said suit of John Lane et al. vs. S. S. Prentiss et al., during the first ten or twelve years after it had been instituted, or at any time prior to 1851? If so, state fully what steps, and when, and whether the city was in fact made a party before 1851; and if so, how long?

15. Did the city ever pay a dollar for the said wharf and landing, to any one? If you say it did, state when, and to whom it was paid, and

how much was paid, and for what part of the landing; and whether any deed or bond for title was taken therefor, and where is the deed or bond so taken?

T. A. MARSHALL,
Sol. for Compl't.

In the U. S. cir. court for the southern district of Miss'i.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

Deposition of N. G. BRYSON, a witness for the defendants, taken by and before Lazarus Lindsay, a commissioner of said U. S. circuit court, at his office in Vicksburg, Miss., by the consent of parties
310 by their counsel, and on the interrogatories and cross-interrogatories hereto annexed, on the 15th and 16th days of Nov., 1869.

Said witness being produced, sworn, and examined, deposes as follows:

To interrogatory 1. I am acquainted with the parties to this suit. I have known complainant for thirty years. He and his family have resided in the city of Vicksburg ever since I have known him, except during the war. I do not know of his changing his residence to another State. I understand that the city landing is involved in this suit.

To int'y 2d. I was mayor of the city of Vicksburg from March, 1848, to March, 1853.

To int'y 3rd. During the time I was mayor a suit was pending in the United States court relative to the title of the city landing. Believing that the city was justly entitled to the same under the original dedication, at my suggestion to the city council I was authorized to employ counsel for the purpose of having the city made a party to the suit. I engaged counsel, and upon their application the city was made a party. Soon after this decision of the court in the year 1851, Mr. Jno. W. Buck, as chairman of the landing committee, introduced a resolution in the council looking toward a compromise. The reasons for this
311 compromise I know not. There was opposition to it in the council, though it was eventually agreed to. In consequence of my opposition I knew but little relative thereto, unless as the same was debated at the meetings of the council, and at this distance of time I have but indistinct recollections regarding the matter.

To int'y 4. After the agreement was made, it became necessary that the council should adopt ordinances to carry out the same. I do not now recollect their purport, but they were, as far as I do recollect, such as were required to carry out the agreement. Dr. Marshall was present at nearly all, if not all, the meetings of the council, and my recollection is that he approved them, though objecting at times, but yielding after the points were fully argued.

To int'y 5th. I have but an indistinct recollection of the matter. It was intended to apply to the Yazoo packets. My impression is that Dr. Marshall approved the ordinance as adopted. I do not recollect of his applying to change the same.

To int'y 6. Dr. Marshall and his agents.

To int'y 7. The city council, in 1852, passed all the ordinances that were required to carry out the compromise. Dr. Marshall was fre-

quently present. His object in being present, I presume, was to
312 see that his interests were protected.

To int'y 8. The wharfage tax on flat-boats was fixed by ordinance of 7th Feb'y, 1852, at two dollars on landing—no further charge for two days—and for each day thereafter, except Sundays, fifty cents per day. By ordinance passed 7th June, 1852, the city levied a tax of one dollar on each flat-boat for landing, which entitled the owners of the boats to sell their goods for two days without any additional tax. This tax of one dollars was intended as a license tax for permission to sell their goods, and had no connection with the wharfage tax.

To int. 9. I do not now recollect.

To int. 10. During my term of office the wharf and harbor master collected the city taxes from the flat-boats, &c. The collection of such taxes was the only duty imposed upon him which did not in any way conflict with Dr. Marshall's right to collect wharfage.

To int'y 11. No quarantine was established during the time I remained in office.

To int'y 12. I know nothing of such surrender.

To int'y 13. I have an indistinct recollection of some modifications, but do not recollect what they were. I have some recollection of an appropriation being made by the council of one thousand dollars to enable Dr. Marshall to carry out the compromise. It was in some way
313 connected with the removal of the wharf-boat "Gov. Jones," then lying at the foot of Jackson street, but I cannot now state the particulars. The money so advanced was not paid back during my term of office.

To int'y 14. I do not know.

To int'y 15. I do not know.

To int'y 16. I do not know.

Cross.

To 1 cross-int'y. I do not.

To 2 cross-int'y. I do not recollect hearing Mr. Reading's name mentioned in connection therewith.

To 3rd cross-int'y. Mr. Arthur's opposition was based upon his belief that the city was justly entitled to the same under the original dedication, as well as upon his belief that Dr. Marshall would not be able to pay off the mortgages upon it if the compromise were made.

To 4th cross-int'y. I have no recollection of his correcting the printing of the ordinances adopted during my term of office, nor do I believe that he did. I never heard him denounce the wrong done him by the council.

To 5th cross-int'y. I do not recollect of any such offer having been made. I know nothing relative to the trips of the Yazoo packets. I do not suppose that complainant would voluntarily give away that amount without any consideration.

314 To 6th cross-int'y. It does. I have no recollection of any remonstrance by complainant's counsel, nor do I recollect that Dr. Marshall employed the wharf and harbor master to collect his wharfage. I have no recollection of any published cards of complainant.

To 7th cross-int'y. I know nothing relative to the quarantine laws.

To 8th cross-int'y. I know nothing of matters mentioned.

To 9th cross int'y. As stated in my answer to 13th direct interrogatory, I cannot recollect the particulars.

To 10th cross-int'y. I know not.

To 11th cross-int'y. I am not aware of any other claim of right or title.

To 12th cross-int'y. I do not now recollect.

To 13th cross-int'y. Yes.

To 14th cross-int'y. I know of no action on the part of the mayor and council to be made a party to this suit until I was in office, when, as previously stated, I was authorized to employ counsel. I think the city was made a party to the suit at the spring term of the United States court, 1851.

To 15th cross-int'y. I know of no payment being made to any one. The money advanced, as previously stated, was to enable Dr. Marshall to carry out the compromise.

N. G. BRYSON.

315 I, Lazarus Lindsay, U. S. com'r, as aforesaid, do hereby certify that N. G. Bryson, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in answer to said inty's and cross-inty's, and that the same were reduced to writing and signed by him in my presence, on the date named in the caption.

LAZ. LINDSAY,
U. S. Commissioner.

(Endorsed:) 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of N. G. Bryson, for defendant.

Filed and opened in open court Nov'r 18, 1869.
GEO. T. SWANN, *Clk.*

Deposition of Laz. Lindsay.

In circuit court of U. S., southern dis't of Miss'i.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF VICKSBURG. } In equity.

Interrogatories to be propounded to Laz. Lindsay, which, with any cross-interrogatories that may be filed, to be answered before U. S. com'r, without formality of further notice. Witness for defendant.

SIMRALL AND YOUNG,
For Def't.
T. A. MARSHALL,
For Compl't.

316 Int. 1. What is your age, residence, and occupation? How long have you been a citizen of Vicksburg?

Intr. 2d. Do you know compl't, C. K. Marshall, and how long have you known him? Where has he and family resided for 20 years last past? Where has Marshall and family resided since 1865; and where has been his citizenship? Has he ever changed his domicil and place of residence? If yes, when and to what place?

Int. 3rd. When were you mayor of the city of Vicksburg? State the years.

Int. 4. Do you know the terms of contract between said Marshall and city of Vicksburg, made in 1852, touching the landing on the river? Have you ever read said contract?

Int. 5. When did Mr. Marshall's term under the contract expire? Did Marshall retain possession of said property and its wharfage revenues after the expiration of his term of 10 years? If yea, for how long a time; and why did he hold over the *the* term?

Int. 6. Did Mr. Marshall deliver up to the city authorities the landing property, and discontinue wharfage collections? If yes, did he voluntarily surrender, and when? Did Mr. Marshall make such surrender in writing? If yes, when? Can you file the original or a copy?
317 To whom was such writing delivered? What became of it? If you can't give the original or copy, state as near as you can the contents.

Int. 7. When Marshall gave up the landing to the city, did he prefer any claim against the city? If yes, for what account?

Int. 8. Did the city forcibly or fraudulently take possession of the landing in 1862? State all the circumstances connected therewith. Was Marshall in Vicksburg in 1862? Especially state where he was at expiration of his lease.

Int. 9. Did Marshall, during your administration as mayor, make complaint to the city council, or to you, that the city authorities had, by ordinances or otherwise, interfered with his rights under the contract? If he did, state in what particulars.

Int. 10. Was any city official authorized by ordinances or otherwise to interfere with Marshall's collection of wharfage revenues? Did the city have in service any officer to make such interference?

Int. 11. State the duties of the harbor-master, or other officer connected with the landing during Mr. Marshall's term of 10 years.

Int. 12. What quarantines were established from 1852 to 1862, inclusive? Was wharfage collected during these quarantines, and by
318 whom? Did the quarantine regulations take away the right to collect *to collect* wharfage? What, if any, effects did the quarantines have on the quantum of wharfage receipts? To what boats or other craft did quarantine apply? To and from what ports? Did or not Marshall petition the council to establish quarantines? Did quarantine regulations touch boats descending the river, and from the Yazoo River?

Int. 13. In any interviews with you in 1862, did Mr. Marshall prefer a claim that for any cause, connected with the contract between the city and himself, the city had forfeited its rights to the landing property?

Int. 14. What became of the city records and other public records of the county in 1862? Were they sent out of the city? If yes, why, and to what place? Were they lost, or any part of them?

SIMRALL AND YOUNG,
Sol's for Def't.

Cross-interrogatories to Laz. Lindsay:

1. Do you know when the wharf-boat called "Gov. Jones" was removed from the "upper landing," and when the ten years referred to in complainant's contract with the city commenced to run? If you say you do, state each date particularly.

2. Do you not know that complainant has always insisted that
319 his ten years of actual income or revenue, within the true intent and meaning of his contract with the city, has not expired at all, and that he never has in fact received ten full years of income?

3. Did not complainant leave Vicksburg in 1861, and go to Virginia, and remain there or in some other place than Vicksburg, attending to, and providing for, the sick and wounded soldiers of the Confederate States till the close of the war, except during a short visit home in 1862?

4. Did complainant, in 1862, or any other time, make any written or other formal relinquishment of his interest in, or right to, or possession of the wharf and landing, to the city, to your knowledge? If you say he did, state particularly when and where and how it was done, and who was present at the time, and what consideration or compensation was given or made him therefor, and by whom.

5. Has not complainant ever since his return to Vicksburg, after war closed, been earnestly trying to obtain from the city compensation for his unexpired term, in the use or income of or from the wharf, urging a settlement, and demanding payment for the time lost to him by quarantine and the war?

6. Did not flat-boats entirely, and steamboats generally, cease
320 to navigate or do business on the river Mississippi after the war broke out, and blockade was proclaimed by the United States?

7. If, in any of your answers-in-chief, you speak of any agent of complainant acting for him after he went to Virginia in 1861, state whether such person was in fact at that time authorized by complainant to act as his agent, and how do you know that fact?

8. If you speak of having any conversation with complainant about the surrender of the landing to the city in 1862, state whether he expressed any intention of giving it up to the city without any compensation for time lost by quarantines and the war, and without any settlement to be had with the city thereafter. What did he say, and what did you understand him to mean on that point?

9. Do you not know that complainant was at that time considerably in debt, and was he able to surrender up large and valuable rights without any remuneration whatever therefor; and from your knowledge of him was it at all likely that he would knowingly do so?

10. How many meetings of the council did you attend in 1862, and who was present at each meeting, and where was the last one you
321 attended held; and was there a quorum then present; and when did you leave Vicksburg that year, if you left at all; and were you present at any meeting, or do you know of any meeting of the council being held after the first bombardment of the city by *the city by* the federal fleet; and when did that bombardment occurr?

11. Do you know whether complainant was in Vicksburg on the 10th of October, 1867, when this suit was instituted; and if you say he was, state whether his dwelling-house was not rented at that time to another person with whom complainant was merely boarding; and did he, complainant, not then claim his citizenship in Louisiana?

12. Did you compare the annual reports of wharf revenues so as to know the damage done by quarantines, or have any chance of knowing about the collections? Did the city authorities possess power to collect wharfage at the quarantine grounds three miles from the city? If Mr. M. petitioned council to fix a quarantine, how was it done? Did he alone assume authority to say it was needed, or did he merely sign a petition
in common with a multitude of citizens? How often were peti-
322 tions sent around for this purpose? Was it ever seen in any quarantine ordinance that boats might land if going one way, and not, if going the other? Did not the yellow fever appear first in the city in 1858, from a steamer descending the river?

13. Did the council ever to your knowledge or belief pay any money for the "Gov. Jones," or for and on account of any liens or debts due for the wharf-boat by Mr. M.: and if so, in what year, and to whom, and what amount?

14. Did not A. B. Reading claim the credit of first approaching Mr.

M. and offering, and then effecting the so-called compromise; and did not the committee on the wharf send him to Mr. M. for that purpose?

15. After the mayor, or mayor and council took possession of the wharf, were not the charges on steamers raised to forty and fifty dollars per boat in confederate funds; and state the sum the wharf-master was authorized to collect from each steamer in 1862, after possession was taken by the city?

16. State if John Bond was appointed to collect wharfage in 1862, and at what time; and when did he cease to serve in that capacity?

W. S. YERGER and
MARSHALL AND MILLER,
For Complainant.

323 Ans. to 1st. I am about 49 years of age; am a resident of the city of Vicksburg, Miss.; am a licensed lawyer, and com'r of U. S. courts for the south. dist. of Missi.

Ans. to 2d. I have known Mr. Marshall since 1850 or 1851, and ever since I have known him he has resided where he does now reside, on Grove street, in Vicksburg, Miss. His family have also resided there, and they have all resided there since 1865. If he or his family ever changed their citizenship, I don't know the fact, (except their absence during the war.)

Ans. to 3rd. I was mayor pro tem. of the city of Vicksburg during the illness of R. H. Crump, the former mayor, from early in Aug't, 1861, until his death, and either in Aug't or Sept., 1861, after Mr. Crump's death, I was elected mayor, to fill the unexpired term of said Crump, which was until March, 1862, and then I was re-elected for two years, or until my successor should be elected and qualified, and continued in office until a mayor was elected after the surrender of the city to the federals.

Ans. to 4th. I have read the contract years ago, but cannot state particularly the terms. I have not read it since the war.

324 Ans. to 5th. If I remember correctly, the contract was for ten years from May, 1852, and would consequently expire in May, 1862, but after the execution of the contract, Mr. Marshall claimed that the wreck of some old steamer (I think called the "Gov. Jones") was permitted by the city authorities to remain on the landing, and three months' time was added to the contract by mutual consent of parties to indemnify Mr. Marshall for damages he claimed. This was the compromise that I remember, and which occurred before I was a member of the city council, and this was the reason that he was permitted to hold over longer than May, 1862.

Ans. to 6th, 7th, 8th, 9th. He did, and I have answered before the particulars as far as I know; the dates I cannot recollect; he made the surrender in writing. I cannot file the original nor a copy, as the original is not in my possession. I will state that whilst I was mayor of the city of Vicksburg, in the summer of 1862, at a meeting of the council being held, either Mr. Smedes or Mr. Auter offered some resolutions (which I thought at the time unnecessary) in relation to communicating with Mr. Marshall on the subject of the surrender of the property in dispute at the end of the lease. (which was near by;) I remember
325 asking Mr. Bender, a councilman, to take my place in the chair, and then I took the floor, and stated to the board that in all conversations that I had held with Mr. Marshall he had assured me that he would, at the end of the three months' extension, (making the contract ten years and three months,) make a peaceable and quiet surrender to the city, which he did do, and which paper so executed by Mr. Marshall I

reported to the board at a meeting a few days after, and which was considered by the board as satisfactory, and ordered to be accepted, and the resolutions before referred to were withdrawn. At the time he made the surrender, and in every conversation that I ever held with him on the subject, he claimed that the city was largely indebted to him for violation of contract in establishing quarantines, in passing various ordinances relative to the landing, and insisted that he could, if he would contend for it, recover of the city. The surrender or release in writing before referred to, as executed by Mr. Marshall, and reported to and approved by the board of council, was by me either locked up in the safe of the mayor's office, or hand to the clerk of the probate court of
326 Warren county, Miss., to be recorded. I am almost certain the latter was the disposition that I made of it. The records of the county were either being or had been removed at the time. The paper was considered by the council as a full surrender of Mr. Marshall's claims against the city, and was received as such. The city received peaceable possession of the landing under that surrender, and Mr. Marshall, of course, was in Vicksburg at the time he executed the release or surrender. I will here state that often, during my term as councilman since 1857 or 1858, Mr. Marshall complained that the board of mayor and council were violating their contract by the passage of ordinances relative to the landing, in which oftentimes I agreed with Mr. Marshall, but a majority of the board always thought otherwise. I can't remember particulars.

Ans. to 10th. Not that I know of.

Ans. to 11th. I would have to refer to the ordinances to answer this, and I have no copy in my possession.

Ans. to 12th. I don't think that I was a member of the city council during any of the years of quarantine, and cannot speak on this subject of my own knowledge.

Ans. to 13th. He oftentimes told me that the city had forfeited
327 the contract on their part, but a majority of the mayor and council always thought otherwise. I often thought Mr. Marshall right in his complaints.

Ans. to 14th. Some of the records of the city were taken by me to several places east of the city, and left at different residences, and some were left in the mayor's office. I did not know which would be the safest place of deposit, and therefore scattered them about. They were all lost, so far as I know. The county officers made the same disposi- of the county records.

Cross-examination.

Ans. to 1 x. In answer, I only speak from my recollection as a citizen, (not being a city official at that time;) I think the ten years referred to commenced in May, 1852; don't know when the "Gov. Jones" was removed.

Ans. to 2d x. I have stated all that I remember about Mr. Marshall's claims, or complaints against the city.

Ans. to 3rd x. I think Mr. Marshall left Vicksburg in 1861, and I know he was here again in the summer of 1862, but don't remember the month; think it was in the month of June.

Ans. to 4th x. He did make such written release, and in my answers in chief I have answered all I remember on the subject.

328 Ans. to 5th x. I believe he has, since the war, been so trying:

this I answer as a citizen only, not having been in any city office since the war; cannot speak officially.

Ans. to 6th x. Yes, I think so.

Ans. to 7th x. I am certain that Mr. Marshall left an authorized agent, and I know it from the fact that the vigilence committee run him away: his name was W. E. Thomas. Thomas left one Bond to represent his business when he left. The council continued Bond as collector, but I don't know that it was with Mr. Marshall's consent.

Ans. to 8th x. He did say that he would make such surrender, but, as I have before stated, claimed that he could, if he chose to contend for it, recover largely from the city for frequent violation of the contract, establishment of quarantine, &c.

Ans. to 9th x. Compl't was said to be largely in debt at the time; but as to his ability to make the surrender, I don't know.

Ans. to 10th x. I don't know, in the absence of the records, how many meetings the council held that year; but they met frequently, and had one meeting as late as October, in that year. I was present at them all. I remember Bender, Auter, Smedes, Wilson, and Moore sometimes being present; we sometimes failed to obtain a quorum, but some-
329 times succeeded. I did not leave Vicksburg that year, but sent my family away. The bombardment by the federals occurred in June, 1862. Meetings were held before and after the bombardment, and some meetings (one in particular I remember) was broken up by the shelling.

Ans. to 11th x. I know nothing in reply to this question, either of my own knowledge or from any other source.

Ans. to 12th x. As I have before stated, I never was a member of the council during the quarantine years, nor do I know anything in reply to this question.

Ans. to 13th and 14th x. I don't know; was not a city official at that time.

Ans. to 15th x. I cannot, in the absence of the records of the city, answer this question; have no recollection of any change in the charges on steamers, but will not answer positively.

Ans. to 16th. One Bond, of whom I have before spoken, did succeed Thomas, as I have before stated; but when the council confirmed or appointed him, or when he ceased to serve, I cannot answer in the absence of the records.

LAZ. LINDSAY.

Sworn to and subscribed before me this 16th day of November, 1869.

GILES M. HILLYER,
U. S. Commissioner for Southern District, Miss'i.

330 STATE OF MISSISSIPPI,
Southern District, City of Vicksburg, ss:

I, Giles M. Hillyer, commissioner of the U. States circuit court for the district and State aforesaid, do hereby certify that Laz. Lindsay, the witness who wrote and signed the foregoing deposition, was by me duly and legally sworn, and that, on oath, he states that the answers to the interrogatories and cross-interrogatories, hereto attached, are true to the best of his knowledge and belief; and that he signed the same in my presence, at my office in Vicksburg, Miss'i, this 16th day of November, A. D. 1869.

GILES M. HILLYER,
U. S. Commissioner for Southern Dist. Miss'i.

Endorsed: C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. 29. Deposition of Laz. Lindsay for defendants.

Filed and opened in open court, Nov. 18th, 1869.

GEO. T. SWANN, *Clk.*

Deposition of W. G. Bender.

In cir. court of U. S., southern dist. of Mississippi.—In equity.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG.

Interrogatories to be propounded to W. G. Bender, on behalf
331 of defendants, to be used as evidence in this cause.

Interrog. 1st. How long have you been a resident of the city of Vicksburg, and what is your age and occupation?

Interrogatory 2. Were you, in the year 1862, or at any time before or since, a member of the council of the city of Vicksburg? Did said council meet and do business in 1862 and 1861?

Interrog. 3rd. Do you know what is the subject-matter of litigation in this suit; and especially do you know, or have you ever seen the contract between C. K. Marshall and the Mayor and Council of the City of Vicksburg in reference to the wharf and levee property? Do you know when the possession of the property, under the contract with the city, was given up to the city by Mr. Marshall? Was Mr. Marshall then in the city of Vicksburg? What transpired on the subject of the surrender of possession between Mr. Marshall and any one representing the city?

Int'y 4. Did Mr. Marshall actually hold possession of the property after the ten years, as provided in the contract, had expired? If yes, state how long? Did you ever have a conversation with said C. K. Marshall about the surrender of the property? If yea, when? and state what it was, and what was said by Mr. Marshall on the
332 subject. Was C. K. Marshall in Vicksburg in 1861 and 1862?

Interrog. 5th. Where did C. K. Marshall reside in 1865, 1866, 1867, 1868, and prior thereto? Is he now, or has he ever resided out of the State of Mississippi?

Int. 6th. Did C. K. Marshall collect wharfage, during his term of six years, by his own agents or collectors or not? Was any officer of the city authorized to interfere with him, and did they do so?

SIMRALL AND YOUNG,
For Def't.

It is agreed that the witness may answer these and any cross-interrogatories before a U. S. com'r, without other notice, forms being waived. 19 Oct., 1869.

SIMRALL AND YOUNG,
For Def't.
T. A. MARSHALL,
For Compl't.

Cross-interrogatories to W. G. Bender.

1. Do you know when the wharf-boat, called "Gov. Jones," was removed from the "upper landing," and when the ten years, referred to

in complainant's contract with the city, commenced to run? If you say you do, state each date particularly.

2. Do you not know that complainant has always insisted that his ten years of actual income or revenue, within the true intent and
333 meaning of his contract with the city, has not expired at all; and that he never has, in fact, received ten full years of income?

3. Did not complainant leave Vicksburg in 1861, and go to Virginia and remain there, or in some other place than Vicksburg, attending to and providing for the sick and wounded soldiers of the Confederate States, till the close of the war, except during a short visit home in 1862?

4. Did complainant in 1862, or at any other time, make any written, or other formal or actual relinquishment of his interest in, or right to, or possession of, the wharf and landing to the city, to your knowledge? If you say he did, state particularly when, and where, and how it was done, and who was present at the time, and what consideration or compensation was given or made him therefor, and by whom.

5. Has not complainant ever since his return to Vicksburg, after war closed, been earnestly trying to obtain from the city, compensation for his unexpired term in the use, or income of or from the wharf; urging a settlement, and demanding payment for the time lost to him by quarantines and the war?

334 6. Did not flat-boats entirely, and steamboats generally, cease to navigate or do business on the river Mississippi after the war broke out, and blockade was proclaimed by the United States?

7. If in any of your answers-in-chief you speak of any agent of complainant acting for him after he went to Virginia in 1861, state whether such person was in fact at that time authorized by complainant to act as his agent, and how you know that fact.

8. If you speak of having any conversation with complainant about the surrender of the landing to the city in 1862, state whether he expressed any intention of giving it up to the city without any compensation for time lost by quarantines and the war; and without any settlement to be had with the city thereafter. What did he say, and what did you understand him to mean on that point?

9. Do you not know that complainant was at that time considerably in debt, and was he able to surrender up large and valuable rights without any remuneration whatever therefor; and from your knowledge of him, was it at all likely that he would knowingly do so?

10. How many meetings of the council did you attend in 1862, and who were present at each meeting; and when was the last one
335 you attended held; and was there a quorum then present; and when did you leave Vicksburg that year, if at all; and were you present at any meeting, or do you know of any meeting of the council being held after the first bombardment of the city by the federal fleet; and when did that bombardment occur?

11. Do you know whether complainant was in Vicksburg on the 10th of October, 1867, when the suit was instituted; and if you say he was, state whether his dwelling-house was not rented at that time to another person with whom complainant was then merely boarding; and did the complainant not then claim his citizenship in Louisiana?

T. A. MARSHALL,
For Compl't.

In the U. S. cir. court for the south. district of Mississippi.

CHA'S K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

Deposition of W. G. BENDER, taken on the part of the defendants in the above-named cause, by consent of parties, and on the interrogatories and cross-interrogatories hereto annexed, before Lazarus Lindsay, commissioner of the U. S. cir. court for the southern district of Mississippi, at his office in Vicksburg, Missi.

336 The said witness, being produced, sworn, and examined, deposeth and saith as follows:

Ans. to 1st. I have been a resident of the city of Vicksburg, Miss., 32 years, and am 58 years of age, and keep a livery stable.

Ans. to 2d. I was a member of the city council in the years 1861 and 1862. The council met and transacted business in 1861 and in the fore-part of 1862.

Ans. to 3rd. I know the subject-matter of litigation, and have seen the contract between C. K. Marshall and the city of Vicksburg. I do not know exactly when the possession of the property was given up, and do not know what was done in the matter.

Ans. to 4th. Do not know whether he actually held possession or not. I never had any conversation with him on the subject of the surrender of the property, that I now remember. C. K. Marshall was here in the year 1861 and in the fore-part of the year 1862.

Ans. to 5th. C. K. Marshall resided in Vicksburg in 1865, '6, '7, and 1868. He never resided out of the State, to my knowledge.

Ans. to 1st X. I do not know when the wharf-boat Gov. Jones was removed, and I do not recollect when the 10 years commenced to run.

337 Ans. to 2d X. I do know complainant has insisted that his contract has not expired; but I do not know that he has not received ten full years of income.

Ans. to 3rd X. I saw complainant in Vicksburg in 1861 and 1862. Do not know where he was after that, till the close of the war.

Ans. to 4th X. I do not know that he made any formal or written relinquishment, but in conversation with him he stated that the ten years had expired, but that he had some back claims against the city for quarantine and other things.

Ans. to 5th X. I have heard him say so, but do not know that he has made any demand upon the city authorities.

Ans. to 6th X. Steamboat navigation did not cease during the war; cannot say as to flat-boats.

Ans. to 7th X. I do not know anything about this.

Ans. to 8th X. I have answered this I think in answer to the 4th question, and have nothing more to say than is said there.

Ans. to 9th X. Do not know anything of complainant's debts or private business, and cannot answer the other parts of the question.

Ans. to 11th X. Do not know whether he was in Vicksburg on
338 11th Octo., 1867, or not, and do not know anything in regard to the other parts of the question.

W. G. BENDER.

I, Lazarus Lindsay, U. S. commissioner as aforesaid, do hereby certify that W. G. Bender, the witness who signed the above deposition, was by me first duly and legally sworn to speak the truth, the whole truth, and nothing but the truth in reply to the interrogatories and cross-interrogatories hereto annexed, in the cause aforesaid, and that his deposition was reduced to writing and signed by him in my presence, at my office, in the city of Vicksburg, on the 13th day of Nov., 1869.

LAZ. LINDSAY,
U. S. Com'r.

(Endorsed:) 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition, for defendants, of W. G. Bender.

Filed and opened in open court Nov. 18, 1869.

GEO. T. SWANN, *Clk.*

Deposition of A. K. Smedes.

In southern district of Mississippi, U. States cir. court.—In equity.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSburg.

339 Interrogatories to be propounded to A. K. Smedes on behalf of defendants, which, with any cross-interrogatories that may be propounded, may be answered before a com'r of cir. court of U. States. Notice and forms waived.

SIMRALL AND YOUNG,
Sol's for Def't.

T. A. MARSHALL,
For Compl't.

Int. 1st. Were you a member of the city council of Vicksburg in 1862, and did said council hold sessions in that year?

Int. 2d. Did C. K. Marshall, in 1862, surrender the landing to the city; and, if yes, about what time? Did the council take action on the subject? Were any resolutions offered by yourself or other member in reference to the subject? If yea, state what was the purport.

Int. 3d. Was any communication received by the council from the mayor on the subject; and, if yes, what was its purport?

Int. 4th. Were the municipal papers and records sent out of the city in 1862? If yes, state for what reason and to what place. Were any of said papers and records lost, and how?

Int. 5th. Was any claim preferred before the mayor and council, or either, by C. K. Marshall, for an extension of time under his contract, or for damages on account of quarantine? Answer fully.

SIMRALL AND YOUNG,
Sol's for Def't.

340 *Cross-interrogatories to A. K. Smedes.*

1. Are y absolutely certain that a council meeting was held in 1862 after the month of June, and before the month of December? Did you attend, and who was present forming the quorum? What business was done? Give names of councilmen present.

2. If a surrender of the wharf was made what motive could induce it, as much time still was claimed by complainant? If you offered resolutions, why did you do so? In what month of the year 1862 was the meeting held? State if the complainant was at the time of such supposed meeting in Vicksburg, or in the army abroad; and if the members of the city council present had not some months previous thereto removed their families out of the city, and many of them at some distance.

3. Did you see any letter or written communication to the mayor, or mayor and council, from complainant in 1862 on the matter of the wharf, and what was its import? Did it surrender the property unconditionally to the council without claim for losses by quarantine?

T. A. MARSHALL,
For Compl't.

341 In the U. S. cir. court southern dist. of Miss.—In chancery.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

The deposition of A. K. SMEDES, a witness for the defendants in the above-named cause, taken before Laz. Lindsay, a commissioner for said court, at his office in Vicksburg, Miss., by consent of parties, and on the int'ys and cross-int'ys hereto annexed.

Said witness, being produced, sworn, and examined, answers as follows:

1. Answer to interrogatory first. I was a member of the city council of Vicksburg in 1862, and said council did hold sessions in that year.

2. Answer to interrogatory second. My impression is that in 1862 C. K. Marshall did surrender the landing to the city. About what time I do not remember, nor am I positive on this subject. I do not remember what resolutions, if any, were offered on that subject, as in relation to the proceedings of that council I relied on the record of its proceedings, and my recollection as to its proceedings is not distinct.

3d. Answer to interrogatory 3d. I cannot say what communication, if any, was received by the council from the mayor on the subject.

342 4. Answer to interrogatory 4th. I do not know of my own knowledge what become of the municipal papers and records of the city in 1862, or whether any of them were lost.

5. Answer to interrogatory 5th. I do not remember whether any such claim was preferred by C. K. Marshall. As a citizen of the city of Vicksburg and member of the council I did not charge my memory with what occurred about the contract in relation to the landing between the city of Vicksburg and C. K. Marshall, but relied upon the records and the action of the then mayor and chairman of the landing committee.

A. K. SMEDES.

1. Answer to cross-interrogatory 1. I am not absolutely certain that such meeting was held, nor can I, in the absence of the record, state who was present and forming the quorum, what business was done, nor give the names of the councilmen present.

2d. Answer to cross-interrogatory 2d. If the surrender of the wharf was made I do not know what motive could have induced it, unless it was that all the claims of C. K. Marshall to the same had expired under

his contract with the city. If I offered any resolution on the
343 subject it was because I desired the action of the council to appear upon the records of the city in relation to any settlement with Mr. Marshall. I cannot state in what month of 1862 the meeting was held. I do not know where Mr. Marshall was at the time of said supposed meeting, whether in Vicksburg or the army. I think that most of the members of the council had before that time moved their families out of the city; when or what distance I do not remember. I think my family was near Bovina in this county.

3. Answer to cross-interrogatory 3d. My recollection in relation to any such letter or communication is too uncertain to enable me to testify positively about it, even as to whether it was received. Being uncertain, I will not give my impression on the subject.

A. K. SMEDES.

I, Lazarus Lindsay, U. S. commissioner as aforesaid, do hereby certify that A. K. Smedes, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth in reply to the int'ys and cross-int'ys hereto annexed, and that the same was written and signed by him in my presence at my office in the city of Vicksburg on this 20th Nov., 1869.

LAZ. LINDSAY,
U. S. Com'r.

4 (Endorsed:) N. S. 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of A. K. Smedes for defendants.

Filed 13 Dec., 1869.

GEO. T. SWANN, *Clk.*

Deposition of A. H. Arthur.

In equity. In cir. court of U. S. for southern district of Mississippi.

MAYOR AND COUNCIL OF CITY OF VICKSBURG }
ads.
C. K. MARSHALL. }

Interrogatories to be propounded to A. H. Arthur on behalf of defendants in this suit, which, with the cross-interrogatories to be put, may be answered before any com'r U. S. cir. court without notice or formality.

SIMRALL AND YOUNG, *for Def't.*
T. A. MARSHALL, *for Compl't.*

Int. 1. What is your age and residence? How long have you lived in Vicksburg and its vicinity?

Int. 2d. Were you a member of the city council of Vicksburg in 1851, 1852? Do you know anything of an agreement between C. K. Marshall and city of Vicksburg, through its corporate representatives, in 1851 or 1852, or about that time, in reference to the city landing and wharves and commons? If you do, state all the facts, circumstances, and
345 *and* inducements for making said contract, as fully as you can recollect. State the claim of the city to any property which was quit-claimed to Marshall, and the nature of Marshall's claim to the property surrendered by him to the city. Did both Marshall and the city have claim to the landing in front of the city? Was Marshall con-

strained by the city or its representatives to enter into the compromise agreement? Who first proposed it? Did Marshall, by himself or his attorney, urge said compromise on the city? State when the terms of compromise were settled and agreed on. Was there a delay in carrying it into effect, and who and what caused the delay? Who was to purchase the "Gov. Jones" wharf-boat and pay for it? Who really paid the money for it? If the money was furnished by the city to Marshall has he ever refunded it?

Int. 3rd. State when and what ordinances in reference to wharfage were passed by the council, contemplated by said agreements. What agency, if any, was had by Marshall in determining the rates?

Int. 4. If there was a modification of rates on steamboats or other water craft from that contemplated by the agreement, did or not Mr
346 C. K. Marshall assent to the same? State what such modification was, and the inducement to make it. Did such modification prejudice or injure Marshall?

Int. 5. Did the city council, during your membership of it, pass an ordinance in reference to wharfage, or other matter connected with said agreement, or do any act that violated said agreement?

Interr'y 6. Did you ever hear Mr. Marshall complain of the ordinances on the subject of wharfage, at or about the time they were passed; and did he apply for a modification?

Int'y 7. Did not Mr. Marshall have the benefit of the wharf and landing and its revenues during the term of his lease?

Int. 8. Did you ever hear that the city had taken possession and control of the city landing before the expiration of Mr. Marshall's lease?

Int. 9. When did military operations, national or confederate, either, interfere with the wharf and city landing? When was the city of Vicksburg invested by land and water?

Int. 10. When did the national fleet blockade the river about Vicksburg; and when did steamers from Vicksburg south cease to run?

Int. 11. What was the value of the city wharfage, its revenues, from May and June, 1862, to same time 1865, and what was the hindering cause, if any?

347 Int. 12. State what quarantines were established on account of yellow fever, from 1852 to 1862, inclusive, how long each was continued; whether Marshall continued to collect wharfage during the quarantines, and at what points. State what falling off was occasioned by quarantines, as to income from wharfage and landing of boats.

Int. 13. Did city collect wharfage and pay same over to Marshall, or did he collect through an agent?

Int. 14. Explain the one-dollar tax on wharf-boats complained of by Marshall in his bill. Was this for wharfage proper, or for privilege of selling produce and goods? Did such tax interfere with Mr. Marshall's wharfage tax? Explain fully.

Int. 15. State, from your knowledge of the navigation of boats of all classes on the Mississippi, and number of landings made by them at Vicksburg, in the year 1862, what would have been an approximate revenue for wharfage at Vicksburg for eight months after the termination of Mr. Marshall's term of ten years.

Int. 16. Did C. K. Marshall pay off the incumbrances on the property conveyed by him to the city, as provided in the contract, and has
348 all such debts yet been paid? Did he comply with his stipulations in the contract, and in what particulars did he fail?

Int. 17. Where has Mr. Marshall, comp't, and family resided and had

domicil since 1840? Has Marshall ever changed his residence or domicil, especially since 1865? Where has been his residence and citizenship?

SIMRALL AND YOUNG,
Sol's for Def't.

Cross-interrogatories to A. H. Arthur.

1. Did not the mayor and council of Vicksburg, after the decision of the high court of errors and appeals in the case of Vick and Rapplege vs. The Mayor and Aldermen of Vicksburg, rendered at the January term, 1837, and reported in the first volume of Howard's Reports against the city, treat and recognize the commons and wharf as the private property of the said Vick and Rapplege, and those claiming under, and levy and collect taxes on it as private property, and from time order gutters and pavements to be made upon it as private property, and have it sold for the non-payment of taxes, and have a portion of it between Jackson and Main streets condemned under writs of ad quod dammum for public use; and did they not continue to treat it as
349 private property until they filed their petition in 1851 to be made a party to the suit of John Lane et al. vs. S. S. Prentiss et al., in the United States court for the southern district of Mississippi?

2. Did the mayor and council of Vicksburg take any steps to be made a party to said suit of John Lane et al. vs. S. S. Prentiss et al., during the first ten or twelve years after it had been instituted, or at any time prior to 1851? If so, state fully what steps and when, and whether the city was in fact made a party before 1851; and if so, how long?

3. Did the mayor and Vicksburg ever have any other claim of right or title to the "commons," including the wharf, than such as was derived from Newett Vick, sen'r, or John Lane, as administrator of his estate, until they obtained their right under said C. K. Marshall? If your say they did, when and how and from whom it was derived?

4. Did the city ever pay a dollar for the said wharf and landing to any one? If you say it did, state when and to whom it was paid, and how much was paid, and for what part of the landing; and whether any deed or bond for title was taken therefor, and where is the deed or bond so taken.

5. Did the city council pay Messrs. Fraisse and Rowe for their
350 wharf-boat "Gov. Jones?" If so, how much was so paid, and in what was it paid? If in city scrip, what was its gold value at the time? When was the "Gov. Jones" removed from the upper landing, and when did complainants' ten years, under his contract with the city, begin to run?

6. State if the wharf ordinances were published by C. K. Marshall: and if not, by whom; and who corrected the printing to guarantee their correctness?

7. If Mr. Marshall consented to give up the am't of ten or fifteen dollars per week on the Yazoo River packets, when it was conceded that he was entitled by contract to five dollars per trip on each boat, what was to compensate him for the loss? What could induce the throwing away of five dollars on each boat per week? Did he not need it?

8. Don't the ordinance explain itself? Was it not the constant desire of city merchants for some years to drive flat-boat dealers from the wharf; and was not this ordinance passed in part to accomplish that end?

9. State if complainant did not publish numerous appeals in the city

papers against the constant wrong done him by council or the "landing committee."

351 10. State in regard to direct interrogatory No. 7, if W. E. Thomas, the agent of C. K. Marshall, was not driven from the city because he was opposed to the war; and who attended to Mr. Marshall's business in 1861 and two after Thomas left? Do you know how many steamers were running here at and during 1861, and how many of them paid wharfage, and how many refused on the ground that, being government boats, the city could not tax them? Did you examine wharf-book and reports and learn anything on the subject? At what time did New Orleans and Memphis fall into the hands of the Union army and navy?

11. What is the present value of the property the city obtained from complainant? State its annual revenues to the city.

12. Did you see or know anything of the reports on monthly receipts for wharfage, so as to be able to form a satisfactory and business-like estimate of the corporation income of the seasons when the river and city were quarantined, and the seasons and years when not? If so, state when and how. Had the city a right to collect wharf rent three miles from town?

13. State, in replying to direct interrogatory No. 15, from what source you derive your information.

352 14. In replying to direct int. No. 16, state if city council did not, through the landing committee, induce complainant to purchase, at a cost of many thousand dollars, the wharf and landing below the Prentiss House and south of the city landing, promising to take it off his hands if he would render them that assistance in obtaining it. And did not complainant so purchase, and after perfecting the titles did not the committee decline, without explanation or apology, to keep the agreement, and thus accumulate another heavy debt on complainant? Did you ever see the letter of the landing committee to C. K. Marshall, agreeing to this contract? Did not this endeavor to serve the best interests of the city necessarily divert his funds from the payment of the mortgage liens, and justify any delay as far as the city was concerned?

15. Do you know if complainant claimed his citizenship in the State of Louisiana, and when in Vicksburg boarded with his family in the home residence with his son-in-law and family?

T. A. MARSHALL ET AL.,
Sol's for Compl'ts.

353 In the U. S. cir. court for the south. dist. of Missi.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

The deposition of ALEX. H. ARTHUR, a witness for the defendants in the above-named cause, taken before Laz. Lindsay, U. S. commissioner for the southern district of Mississippi, at his office in Vicksburg, Miss., as per agreement of parties by their counsel, and on the interrogatories and cross-interrogatories hereto annexed.

The said witness, being produced, sworn, and examined, deposes and says:

Ans. to 1. I am 57 years of age, and have lived in Vicksburg and vicinity for the last 34 years.

Ans. to 2d. I was a member of the city council of Vicksburg in 1851–1852, up to March, 1853, and was in the council when the agreement, or compromise, as it was termed, was made between C. K. Marshall and the City of Vicksburg, in reference to the city landing and wharves and commons referred to. I had no inducement to make the compromise; believing it to be the property of the city, I felt it my duty as one of the representatives to oppose the compromise at every step, and in all its parts, and recorded my vote against it. The only inducement that I heard other members express was to settle all further liti-
354 gation on the subject. For years the city had quiet and peaceable possession of it, until Mr. Prentiss and others, assignees of Rapplege, (who had purchased the claim of W'm Vick, son of Newett Vick, dec'd, the original proprietor, who laid out the town,) brought suit against the city for it. The city gained the suit in all the lower courts, but when it came to the high court of errors and appeals some of the judges were interested, and the governor appointed special judges in the case, and the suit was decided against the city. In 1838, shortly after this decision, I became a member of the selectmen, or council, and John Lane, who married a daughter of Newett Vick, either had, or was about to take, his domicil in Louisiana, and bring suit against Prentiss and others in the United States court for his wife's interest, and the interest of all Mr. Vick's daughters and their heirs, (Mrs. C. K. Marshall being one of the daughters.) Mr. Holt, now Judge Advocate of the U. S., was one of the counsel for the city in the high court, and was my counsel, and he expressed to me his legal opinion that the city was entitled to the property, and I desired to get the board to endeavor to become a party to the suit of John Lane. Judge Lane, in a conversation with me on the subject, stated his belief that Newett Vick, deceased,
355 had dedicated this property in controversy, as well as the public square and public streets, to the town, and that he, as adm'r of Mr. Vick, when he sold the balance of the unsold lots in the city or town, had so regarded it; but that if it was not dedicated to the town, the daughters had an equal interest with the sons. He positively assured me also, that if he gained the suit, he would, for himself, and use his efforts for the other heirs to join, make a dedication to the city of the public landing, which he always felt and believed to be the property of the city, reserving to the heirs all the commons lots not necessary for the use of the city in connection with the city landing. Relying on this fair proposition of Judge Lane, I made no effort as a member of the council to disturb his progress or to get the city a party to the suit. After a few years Judge Lane, the plaintiff, died, and the defendants to suit became greatly involved, and their interests in the property so depreciated that many of them were sold out for taxes and judgments, and many sold their interests very low to avoid further costs, and the titles and property were changing very fast. Mr. Marshall purchasing out the other heirs, and much of the property on very low terms and for taxes, &c., the city council began to feel that we would lose all our interest unless we could become a party to the suit then pending in the U. S.
356 court, and counsel (Mr. A. Burwell) was employed to make an application to said court for the city to become a party to the suit of John Lane et al. vs. S. S. Prentiss and others, in order to have the rights of the city in the wharf and landing determined, which application we were advised was successful; and then, some time afterwards, for the first time, I heard of a compromise, but whether made by Mr. Marshall direct to the city or not, I cannot now remember, but think it was made to certain members of the council then in office,

coupled with a proposition for the city to withdraw from the suit in the U. S. court, to which I was opposed, being willing to rest the claims of the city with the U. S. court, and being assured by our counsel that we would gain the property. It was about Sept'r, 1851, that Mr. Buck offered the resolution to appoint a committee to confer with Mr. Marshall, who then claimed the whole property, (except a claim of W. S. Bodley and others, and also 147 feet six inches, then claimed and occupied by Fraisse and Rowe, with the wharf-boat "Gov. Jones;") and in November, 1851, the committee reported an agreement or compromise with Mr. Marshall, the substance of which was, according to my recollection, to give him the use of the property for ten years, to recognize a
357 lease he had made of the landing and wharves with Thomas Porterfield, with the privilege of collecting wharfage at the landing, and at the end of that time Marshall to have all the commons lots and buildings, &c., on them, and to convey to the city all the wharf and landing, free from all claims, mortgages, or liens of any kind, and the city to withdraw from the suit in the U. S. court, so as to let judgment go in favor of said C. K. Marshall by default or consent, there being no other party then contesting, according to my recollection. This report was discussed at several meetings of the city council, and finally adopted on or about 12 November, 1851. There were several changes made in the original compromise, all at the instance of Mr. Marshall, and one of which I recollect. It had been stipulated that the city council was to appoint the wharf and harbor master and collector, and the city to receive the proceeds of the wharves and landings until all the claims and mortgages on the same were paid off, but the change was to allow Mr. Marshall to appoint his collector, the council to approve, and the proceeds to be paid to Mr. Marshall, he agreeing to remove all *all* obstacles to the landing and to pay off all claims and mortgages in a specified time. Mr. Marshall was not constrained by the city or
358 its representatives to enter into this compromise; himself and his able counsel urged it with great zeal night after night at the sittings of the council. I always felt that it was forced on me, and in opposing it incurred his displeasure, and for which he has never forgiven me, and it is remarkably strange that if he was opposed to it himself he did not assist me in defeating it. After its adoption there was considerable delay in carrying it into effect, caused entirely by Mr. Marshall's failure to comply with his agreement in removing the "Gov. Jones" and other claims on the landing; and it was not until January, 1852, that it was considered complete. Mr. Marshall had, previously to any proposition to compromise, leased the landing to Tho's Porterfield, and obligated himself to remove the "Gov. Jones," an opposition wharf-boat, and this lease he required the city to recognize, and incorporate into the compromise; but in January, 1852, he reported himself unable to purchase the interest of Fraisse and Rowe in the "Gov. Jones" and the 147 feet 6 inches landing, and he applied to the city council to appropriate the funds from the city treasury for that purpose, to enable him to make the purchase, or else the compromise would fail, as he was unable to carry out his agreement. He also applied for another
359 appropriation from the city treasury to purchase out the interest of Judge Bodley, one of the owners with Prentiss in the property, to fulfil his agreement, and both of these appropriations were made to Mr. Marshall from the city treasury. One, I think, was $1,000 00, and the other I do not recollect the amount, and the city records were destroyed during the war. On the 12th day of January, 1852, Mr. Marshall and his wife acknowledged the compromise, and on the 30th day

of January, 1852, it was filed for record, the latter being the day on which the "Gov. Jones" was bought; and on the 3rd February, 1852, Mr. Bryson, the mayor, reported to the council that he had issued Mr. Marshall the scrip appropriated at a previous meeting to purchase the "Gov. Jones," and had filed the compromise for record. In three months from the date of the removal of the "Gov. Jones" it was to go into effect, and on the 30th April, 1852, the compromise with him commenced; and for 10 years his occupancy was to run, till 30th April, 1862.

The compromise ought to have commenced 3 months from the time of its adoption, 12 November, 1851, but as Mr. Marshall had possession of the landing, and was receiving the profits of it, the longer he delayed its completion the more he would receive; and one of the argu-
360 ments used by members in favor of giving him the appropriation asked for was that as he had already lost two or three months in time, we had better give him the money to purchase out the Gov. Jones than to let him receive the profits for an indefinite period, till it was his pleasure to complete it, and thus fix the date at once when his ten years were to commence. Neither of these two appropriations has ever been paid back by him, or any one else, to the city treasury. This, I believe, answers the interrogatory fully.

Interrogatory 3. The compromise required the city council to pass such ordinances as would enable Mr. Marshall to collect wharfage from steamboats, flat-boats, &c., and in accordance therewith two ordinances were passed at the first meeting after the completion of the compromise was reported, to wit, on the 7th day of February, 1852; one to establish and regulate the steamboat landing, fixing it permanently between Clay and China streets, as required in the compromise, fixing the wharfage rates on steamboats, and assessing a fine on the officers of any boat for refusing to pay, and also to pay $10 for such landing after refusing to pay regular charges. And on the same day another ordinance to fix the place of landing of flat-boats, rafts, &c., and
361 the wharfage fees, &c. These are the only ordinances that I recollect up to March, 1853, when I left the council fixing the rates of wharfage or prices of steamboat landing, and were both made by consent of Mr. Marshall, who was present at the city council, and one of which was, I think, in his handwriting, and my impression is that it was the one in relation to steamboats.

Interrogatory 4. The only modification that I recollect, from the terms of the compromise, was that the Yazoo packets, which landed 2 or 3 times a week, I think, were only to be charged $5 per week, instead of $5 for each landing, as other boats, and Mr. Marshall assented to it, and I think the ordinance was in his hand-writing. I think Mr. Marshall and Mr. W'm Porterfield were both present at the city council, and the impression on my mind was that it was a concession made by Mr. Marshall to Porterfield, who was interested in the Yazoo boats. I did not suppose it would injure Mr. Marshall, as he was sharp enough to know his own interests, and supposed that as he had leased the landing to Porterfield, and Porterfield was general agent for all steamboats and could aid and board and assist Mr. Marshall's collector, that Mr. Marshall was willing to cultivate him and make an exception to Porterfield's
362 own boats on the Yazoo River, he being at that time, or was about to be, U. S. mail contractor. This was the impression made on my mind at that time, and as the city had no interest in changing it, and Mr. Marshall, the only interested party, was asking the council to do it, I voted for it just as he wanted it. That Mr. Marshall consented to it, I am positive, and, in a conversation with Mr. Marshall since, he ad-

mitted to me that he had agreed to it with Porterfield, and that he wanted to accommodate Porterfield, and thought it would bring extra trade and advance the interests of Vicksburg.

Interrogatory 5. The only other ordinance on the subject of the landing that I recollect, up to March, 1853, when I left the council, was one on the 7th June, *June*, 1852, and amended 7th Feb'y, 1853, was in relation to flat-boats, keel-boats, &c., but intended expressly for the taxes, which the city had reserved the right in the compromise to levy on such boats for selling, and had nothing to do with or interfere with Mr. Marshall's collection wharfage; and I know of no action of the council, during my connection with it, up to March, 1853, in violation of the compromise. I feel certain that though I opposed the compromise I
363 would not have agreed to any change of it without Mr. Marshall's consent, as I had opposed it partly on the ground that Mr. Marshall, or some of his heirs or assignees, might get some future council to violate it, and then claim the advantage of the violation. I was very careful, and I feel very sure that no other member of that council, from March, 1851, to March, 1852, who felt satisfied that they had made sacrifices in making it, would, at their first meeting after its completion, do any thing to violate it, as they all wanted to carry it out in good faith. The city had no interest in violating it, but a direct interest in carrying it out in good faith. The new city council, after its completion, elected in March, 1852, was composed of a majority of the same members who made the compromise, with the addition of Tho's A. Marshall, esq., (in place of Mr. Donovan,) who was the year before counsel for Mr. C. K. Marshall, and who wrote the compromise, and I am satisfied none of them would have allowed, much less perpetrated, any violation of its stipulations. In 1853 I removed without the city limits, and have had nothing specially to do with city affairs, and can only give my best recollection of events occurring more than 16 years ago, but which, from the position in which I was placed, and the part I was compelled
364 to take in them, made strong impressions on my memory.

Interrogatory 6. I never heard Mr. Marshall complain or object to the ordinances I have referred to whilst I was in the council, and he never applied for a modification of them whilst I was a member.

Int. 7. Mr. Marshall had the benefit of the wharf and landing and its revenues the whol 10 years, to the best of my recollection.

Int. 8. I never heard the city had possession until the 10 years of Mr. Marshall's lease had expired.

Int. 9. There was tempo'ry interference in the river above in 1861, but it was about the 18th June, 1862, that Farragut's fleet came up the river and Porter's fleet came down the river and invested Vicksburg by water only; but some time on 28th June, 1862, the fleet passed the city and ran back again, and in July, 1862, both fleets disappeared and the river was again open below to the coast, and above to near Memphis, I think. The confederate boats then ran the balance of the year.

Int. 10. The national fleet from above invested Vicksburg again about 18 May, 1863, and Gen'l Grant invested it by land, and after the fall of Vicksburg, 4th July, 1863, the whole river was blockaded.

365 Int. 11. I do not think the city landing was of any value, or that there was any revenue from it to the city from May and June, 1862, to July, 1865, as the river was either so blockaded as to prevent trade, or it was in the possession of the national troops.

Int. 12. I was not in the council after March, 1853, and cannot give the dates or duration of the quarantine, or state what falling of there

was in wharfage. I know there was a quarantine, and Mr. Marshall had possession of the landing.

Int. 13. Mr. Marshall appointed his own collector, who collected wharfages.

Int. 14. The only one dollar tax that I know of was levied on flatboats as a tax per day for selling produce, &c., at the landing, and it did not interfere with Mr. Marshall's tax. I have explained this in answer to 5th interrogatory.

Int. 15. I cannot answer this question, as I have but little knowledge of the river business about that time.

Int. 16. I have never heard that Mr. Marshall paid off the incumbrances on the property conveyed by him to the city by the compromise. He did not comply with his stipulations in the agreement, in the case of the removal of the Gov. Jones, and the interest of Judge Bodley, both of which the city had to pay out of the treasury to complete it.

366 Int. 17. Mr. Marshall and family have always lived in Vicksburg since I have known them, for upwards of 30 years. I heard that Mr. Marshall, for the purpose of bringing this or some other suit, claimed to be a citizen of Louisiana, but I have always seen his family here.

A. H. ARTHUR.

Answer to cross-interrogatories.

1 x-int. After the decision of the high court, in 1837, the city was bound to, and did, as far as they were compelled by law, recognize the commons and wharf as the private property of Mr. Prentiss, and other assignees of Rapplege. When these parties laid off the commons into lots, the city had to open and improve the streets in front of them, and did require pavements and gutters to be made as in all other cases, and did tax these lots as other property; but I am not aware, nor do I believe, that the city ever taxed, or made any assessment upon the wharf and landing. On the square between Jackson and Main streets, and between Washington street and the river, known as the old city landing, and being the same square at which the Gov. Jones was moored, the city did have an assessment of its value, under writ of ad quod damnum, (including the 147 feet 6 inches claimed by Fraisse and Rowe, from Hartwell Vick's heirs, and which was not claimed by C. K. Mar-

367 shall,) with a view to establish a steamboat landing; but no further steps were taken that I recollect, and matters remained in this condition till the city became a party to the suit in the U. S. court, in 1851.

2 x-int'y. I am not aware of any steps being taken to make the city a party to the suit of John Lane vs. Prentiss et al., until the employment of Mr. Burwell as counsel, which resulted in getting the city to be a party, in 1851. I have already, in answer to 2d direct interrogatory, that I was desirous to make such a move, but was deterred by the assurance of Judge Lane, in whom I had full confidence, that *if* he would, if he gained the suit, confirm the dedication of the wharf and landing to the city, and the commons I was willing the heirs should have, as the city had no use for it, and I considered the judge's proposition fair to let the heirs have it, and the city have the public landing.

3rd x-int'y. I always regarded the right or title of the city to the commons and wharf to be derived from the dedication of Newett Vick, deceased, and John Lane, his adm'r, the same as the public square and

public streets. The city may have acquired some title to parts of it by tax sales, or Judge Bodley's interest, or to the 147 feet 6 inches, through Fraisse and Rowe, and Hartwell Vick's heirs, but I do not recollect the circumstances; but I regard the city title as coming through Newett Vick, deceased, and John Lane, adm'r as aforesaid.

368

4 x-interr'y. I do not remember any payment by the city, except the appropriation to Mr. Marshall to purchase out Judge Bodley's claim, and $1,000 to purchase Fraisse and Rowe's claim, and "Gov. Jones." I know of no deeds or title bonds taken for same.

5 x-interr'y. I have already stated, in answer to 2d direct interrogatory, that Mr. C. K. Marshall applied to the council for funds to purchase out Fraisse and Rowe's interest in the 147 f't 6 inches, and the wharf-boat "Gov. Jones," and I *and I* think it was $1,000 appropriated to him for that purpose. An order was given on the city treasurer, and it is called scrip; but it was in fact a treasury order for the amount of its face, and I suppose was paid in cash, as the city had plenty of funds in the city treasury at that time. The city credits and warrants were at par—dollar for dollar—and gold and silver, or its equivalent, specie-paying bank notes, was the standard, and I suppose it was paid by the city treasurer, as all orders on him at that time were paid promptly. I have already stated, in same answer, that the Gov. Jones was removed 30 January, 1852, and that Mr. Marshall's 10 years' lease commenced three months afterwards, viz, 30 April, 1852.

369

6 x-int'y. I suppose all the ordinances were published by the public printer, it being the duty of the mayor to send them to the printer; but I don't know whether the mayor or printer corrected them. I think Mr. Marshall usually had his wharf ordinances published extra, to notify all boats, &c.; but don't think he corrected them.

7 x-int'y. I have already stated, in answer to 3rd direct interrogatory, that Mr. Marshall did consent to the ordinances; my belief that it was a concession on his part to W'm Porterfield, and his admission to me that such was the fact. I suppose Mr. Marshall did need all the funds he could get at that time; but as I am asked what could induce him to throw away $5 per week on each boat, I can readily perceive why he should do it for Porterfield. Porterfield had the U. S. mail contract on the Yazoo River, and was the only man compelled to make three trips per week, the year round, (the other boats need only make one trip at $5,) and his concession to Porterfield would be $10 per week, or $520 per annum. Mr. Marshall had leased a portion of his landing to Porterfield for a wharf-boat, at which all the steamboats on the Miss. River had to land, for he had agreed with Porterfield to remove the other wharf-boat, Gov. Jones, and no others were to be permitted at the landing during Porterfield's lease, if I remember correctly. Porterfield was also general agent of all the steamboats on the Miss. River, and very popular with them, and it was very important for Mr. Marshall to secure his aid in watching boats and collecting his wharfage, in case of the absence at night or of the sickness of his own collector, which would be worth more to him than the concession of $520 on Porterfield's own boats on the Yazoo River. Besides this, Mr. Marshall thought such packets would largely increase the business of Vicksburg, and as he was about to sell or lease lots, or build about 40 storehouses or shops on his commons, opposite and contiguous to the steamboat landing, this increase of business would directly add to the rental value of all those shops and business houses, and increase his rents double and treble over houses of the same class in any other part of the city, and thus bring

370

him 10 times as much annually as the concession he made to Porterfield. These are additional inducements, which a shrewd and intriguing man like Mr. Marshall would naturally adopt, and which I supposed at the time influenced him; but as he was the only person interested—
371 the only party who had a right to object, and was present asking for, and consenting to the passage of, the ordinance which we had already obligated to pass, for his benefit—I and others voted for it.

8th x-int'y. I don't know what ordinance this question has reference to, unless it be the one of 7th June, 1852, and amended 7th Feb'y, 1853, referred to in my answer to 5th direct interrogatory, to tax flat-boats, &c., for the right of selling produce, &c., which, so taken together, I believe explain themselves. There was always great opposition among regular merchants against flat boat traders, and they particularly thought it due that they should pay taxes for the privilege of selling, as well as the regular merchants. Two the members of the council who favored the compromise and passed this ordinance and amendment were interested in flat-boats trading as dealers, and I can't say it was passed expressly to drive them away, but it was intended to make them pay taxes to the city as well as Mr. Marshall's wharfage.

9th x-int'y. I don't remember Mr. Marshall's appeals in the papers against the wrongs done him in council or by the landing committee. I left the council, as stated, in March, 1853, and have not interfered much in city affairs since, unless called upon by the mayor and council
372 or the people, for that purpose. Mr. Marshall's communications to the newspapers are so frequent on all subjects that they have not attracted my special attention.

10 x-int'y. I am not aware that W. E. Thomas, his agent, was driven away from the city because he was opposed to the war. He was very unpopular before the war, as he was regarded as an abolitionist, and on one occasion was protected by Gen'l Tappan and his "home guards." * * * * * * *
I don't know how many steamers were running here during 1861 and 1862, nor how many paid wharfage or how many refused, nor the reasons. I was in New Orleans the middle of April, 1862, and shortly after that it fell into the hands of the Union army and navy—probably about the 25 day of April, 1862. Memphis, I believe, was taken about 6 of June, 1862.

11 x-int'y. I don't know the present value of the property. Its revenues for the last year has been about $21,544 15; $18,210 for wharfages, $2,075 for commissions for collections, $785 for saw-mills and wood-yard rents, and $468 15 for sales of merchandise, &c. The average monthly receipts for wharfage for the last year, less commissions, has been about $1,518 per month.

12 x-int'y. I got the above amounts of revenues from the re-
373 ports of the officers to the council, but I have made no comparisons of the income of former years or when quarantined. I do not think the city had a right to collect wharf rent 3 miles from town.

13 x-int'y. In answer to 15th direct interrogatory, I stated I had no sufficient knowledge of the river business to answer the question.

14th x-int'y. I know nothing of the transaction referred to, between Mr. Marshall and the landing committee; never saw any such letter referred to or heard of the transaction, that I recollect, till I read this question. Don't know whether Mr. Marshall involved himself by the transaction or not; nor can I see how he involved himself in making the new purchase of landing below the city, if he took the funds derived from the wharf and landing revenue, which was pledged and ought to

have been used to take up the mortgages on the landing, to pay for the new purchase, as the whole question would imply. If such a transaction did occur, it ought to have been made with the council, who alone are authorized to bind the city, and not with an unauthorized committee on the streets and landings. It was not fair treatment, if it did occur, as the question is propounded, but Mr. Marshall's experience with
374 public matters ought to have warned him to deal directly with the fully-authorized agents of the people. He knows that it requires the direct action of the mayor and council to buy or sell land on account of the city.

15 x-int'y. I have already stated, in answer to 17 direct interrogatory, that I had heard Mr. Marshall had claimed his citizenship in Louisiana for the purpose of bringing this or some other suit, but that I had always seen his family here. Since Mr. Woolfolk has settled in Vicksburg he has resided in the old family residence with Mr. Marshall's family; but whether Mr. Woolfolk or Mr. Marshall is the proprietor, I do not know.

A. H. ARTHUR.

I, Lazarus Lindsay, U. S. commissioner as aforesaid, do hereby certify that Alex. H. Arthur, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the int'ys and cross-int'ys hereto annexed, and that his answers thereto were reduced to writing, and signed by him in my presence, at my office, in the city of Vicksburg, on the 30th day of Nov., 1869.

LAZ. LINDSAY,
U. S. Com'r.

375 (Endorsed:) 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of A. H. Arthur, for defendant.

Filed 13 Dec., 1869.

GEO. T. SWANN, *Clk.*

Opened by me Dec. 13, '69.

GEO. T. SWANN, *Clk.*

Depositions of Frank Packard and W. R. Wadsworth.

In cir. court of U. States, southern district of Mississippi.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } In equity.

Interrogatories on behalf *on behalf* of the defendant, to be answered by Frank Packard, and Wadsworth for defendant, before any com'r of U. S. cir. court; also any cross-interrogatories put, without further notice; forms waived.

SIMRALL AND YOUNG,
For Def't.
T. A. MARSHALL,
For Compl't.

Int. 1. What is your age, residence, and occupation?

Int. 2. Have you held, or do you now hold any post or office, under or in the municipal government of the city of Vicksburg? If yes, state the office.

Int. 3rd. Are you familiar with the records and files of papers connected with the city of Vicksburg? What has become of the
376 minutes of the city council prior to 1863? Are there any in the office of clerk of city council? Have you made a strict examination? Are the proceedings of the city council in 1851 and 1852 in the possession of the clerk of said city, or any other city officer? Can you furnish copies of the proceedings of city council in 1851 and 1852? If you cannot, state why.

Int. 3rd. Were not the papers and records of the city of Vicksburg connected with the municipal government lost during the war?

Int. 4. Examine among the records and files of papers of the city government and state if there is on file or among said papers a written release or surrender made by C. K. Marshall, in 1862, of the city landing to the mayor and council, or city of Vicksburg, or any person on their behalf, or any other paper made by Marshall dated in 1862, pertaining to the said city landing? If there is such a paper file a copy of the same with your answer hereto.

SIMRALL AND YOUNG,
Sol's for Def'ts.

In the U. S. cir. court for the south. dist. of Miss'i.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg. } In chancery.

Depositions of witnesses on the part of the defendants in the
377 above-named case, taken before Laz. Lindsay, com'r for said court, at his office in Vicksburg, Miss., by agreement of the parties, and on the inty's thereto annexed.

W'M R. WADSWORTH, being produced, sworn, and examined, deposeth and saith:

Ans. of W. R. Wadsworth to int'y 1. I am 23 years of age; reside in Vicksburg, Miss'i; from the 20th December, 1867, to 5th April, 1869, I was clerk of the city of Vicksburg; am now clerk to the city assessor.

Ans. to 2d. I am assisting the city assessor at the present time.

Ans. to 3rd. I am familiar with the records and papers that were in the mayor's office at the time I was city clerk before named. The minutes of the council since March 19, 1860, are in possession of Mr. Packard, my successor. I have not examined the records from March 19, 1860, to Dec'r 20, 1867. I believe the proceedings of the city council of 1851 and 1852 are not in the office or in possession of the city clerk. I don't know where they are nor what became of them.

Ans. to 3rd. I have been told they were lost.

Ans. to 4th. Not being the city clerk, and not employed in that office, the records are not in my possession to make the examination desired.

W. R. WADSWORTH.

378 I, Lazarus Lindsay, U. S. com'r as aforesaid, do hereby certify that W. R. Wadsworth, the witness who signed the foregoing

deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the inty's hereto annexed: and that his answers thereto were reduced to writing and signed by him in my presence on this 16th Dec'r, 1869.

LAZ. LINDSAY,
U. S. Com'r.

FRANK PACKARD, a witness for the defendants, being produced and sworn and examined, deposes and says:

I am past 30 years of age; my residence is Vicksburg, Miss.; I am city clerk, city of Vicksburg, from April 19, 1869, to the present moment. I am not very familiar with the records and papers of the city of Vicksburg. The minutes since March 19, 1860, are in my possession. The rough minutes from 1860 to 1865 are, to the best of my belief, not in the possession of the city, and prior to the first-mentioned date, also. I have not made a strict examination of the papers. The papers of 1851 and 1852 are presumed to have been lost during the war. At any rate, I have never seen any of that date.

In answer to the 4th interrogatory. I have no knowledge of any such paper in my possession. But I have a proposition, without date
379 or signature, offering to surrender the nine lots west of the Prentiss House, and Mr. Newlinson's wharves, and other property not known to this affiant by reason of the paper not being dated or signed. There is also a proposition to sell the landing for certain considerations therein mentioned, by one W'm Crutcher and associates, with no date.

FRANK PACKARD.

I, Lazarus Lindsay, U. S. commissioner, as aforesaid, do hereby certify that Frank Packard, the witness who signed the foregoing deposition, was by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the inty's hereto annexed, and that his answers thereto were written by himself and signed by him in my presence on this 17th Dec'r, 1869.

LAZ. LINDSAY,
U. S. Com'r.

(Endorsed:) 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Depositions of W. R. Wadsworth and Frank Packard for def't.

Filed Jan'y 25th, 1870.

G. T. SWANN, *Clk.*

Depositions of J. H. Chappell and Tho's C. Richardson.

380 In the U. S. cir. court for the southern dist. of Miss.—In equity.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

Depositions of J. H. CHAPPELL and THO'S C. RICHARDSON, witnesses for the defendants in the above-named cause, taken before Lazarus Lindsay, U. S. com'r for said dist. and State, at his office, in the city

of Vicksburg, Miss., by agreement of the parties by their counsel, and on the interrogatories annexed hereto.

Said witnesses being produced, sworn, and examined, depose and say, as follows:

United States of America, circuit court of United States for southern district of Mississippi.—In equity.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG.

Interrogatories to be propounded on behalf of the city of Vicksburg, defendant, to J. H. Chappell and T. C. Richardson, which, with any cross-interrogatories, may be answered before U. S. com'r. Formalities waived.

SIMRALL AND YOUNG,
Sol's for Def't.
T. A. MARSHALL,
For Compl't.

Int. 1st. What is your age and business? If you answer that you are connected with the probate clerk's office, state how long you
381 have been connected with that office, how, and whether you are familiar with its records.

Int. 2d. After making search among the files and records of your office, state whether there is a paper on file, or of record in the office, dated any time in 1862, or since that time, surrendering, or purporting to surrender or release, the city landing property by C. K. Marshall to the city of Vicksburg, its mayor and council, or to any person on their behalf; or is there a paper on file, or of record in your office, made by said C. K. Marshall to the city of Vicksburg, or mayor and council, or any person on their behalf, having any sort of reference or connection with the city landing property? If there is, furnish and attach to your answer a certified copy of the same.

SIMRALL AND YOUNG,
Sol's for Def't.

Answer to int. 1 by J. H. Chappell. I am 22 years of age; have been clerk of the probate court of Warren County, Mississippi, since April, 1869, and am somewhat familiar with the records of the office.

Answer to 2d. I have searched the records and find no paper on file in my office, or of record, made at any time since the year 1862 by C. K. Marshall, surrendering, or purporting to surrender or lease, the
382 city landing property of the city of Vicksburg to any person, nor either to the mayor and council of said city.

J. H. CHAPPELL.

Answer to int. 1st by T. C. Richardson. I am 33 years of age; have been deputy clerk of the probate court of Warren County, Mississippi, since August, 1865; I am perfectly familiar with the records of said office.

Answer to int. 2d. I have searched the records of the office and find no paper on file, or of record in my office, made at any time by C. K. Marshall, surrendering, or proposing to surrender or release, the city landing property of the city of Vicksburg to any person, nor either to the mayor and council of said city.

T. C. RICHARDSON.

I, Lazarus Lindsay, U. S. com'r as aforesaid, do hereby certify that J. H. Chappell and Tho's C. Richardson, the witnesses who signed the foregoing depositions, were by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in reply to the int'ys hereto annexed; and that said depositions were written and signed by them respectively in my presence, at my office, in the city of Vicksburg, Miss., on the 16th day of Dec'r, 1869.

LAZ. LINDSAY,
U. S. Com'r.

383 (Endorsed:) N. S. 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Depositions of Chappell and Richardson, for defendants.

Filed and opened by me in court.

GEO. T. SWANN, *Clk.*

Deposition of M. Donovan.

In circuit court of U. States, southern district of Mississippi.—In equity.

C. K. MARSHALL
vs.
MAYOR AND COUNCIL OF CITY OF VICKSBURG.

Interrogatories to be propounded by M. Donovan, which, with cross interrogatories that may be propounded, may be answered before com'r of U. States cir. court. Notice and formalities waived. Witness for def't.

SIMRALL AND YOUNG,
Sol's for Def't.
T. A. MARSHALL,
For Compl't.

Int. 1. Do you know the parties to this suit and the subject-matter of the suit? How long have you known C. K. Marshall? What is his domicil and residence? Where has he and family resided for 20 years last past? Where have he and they resided since 1865? Has he changed his domicil residence? If yes, when and to what place?

384 Int. 2d. What is your age, residence, and how long have you resided in Vicksburg? Were you ever a member of the city council of Vicksburg? If yes, state for what years.

Int. 3rd. Have you been specially familiar with the municipal affairs of Vicksburg since 1860?

Int. 4. Were you in the council when the compromise agreement was made between the corporate authorities and said Marshall in respect to the city landing property? Are you familiar with the terms of said contract? Was said Marshall willing or averse to the making of said contract?

Int. 5. Were you present when the ordinances were passed in 1852, by the council, having reference to the rates of wharfage on steamboats and other water craft; or when said ordinances were under consideration? Did said Marshall know of the terms of said ordinances? Did he consent or object to them? State all you know in reference to the rates of wharfage supposed to be intended to apply to Yazoo River packets, of packets making more than one trip per week. State also if Marshall, compl't. had knowledge or agency in the passage of the same. State

for whose interest and at whose request the rates were so fixed.

385 Int. 6. Who were members of the council when the compromise agreement was made, and also when these ordinances were passed?

Int. 7. What wharfage was put on flat-boats and keel-boats? Did the city put a tax on these boats? If yes, to what amount and for what purpose? And did the same conflict with Mr. Marshall's wharfage tax on the same boats? State all your knowledge on this subject.

Int. 8. Who collected the wharfage during Marshall's term of ten years, and for whose account? Were the collectors appointed by Marshall or the city?

Int. 9. Did the city comply with what she agreed to do in her contract with Marshall during his term of 10 years? Did any ordinance passed by the city interfere with Marshall's wharfage dues or with their collection? If yes, name the ordinance. Did the city officers in any way interrupt or interfere? If yes, in what mode?

Int. 10. Did Marshall, shortly after the making of the compromise agreement, represent to the city his inability to carry it out? And did the city aid him with money or otherwise? If yes, state the particulars.

386 Int. 11. Did Marshall, in the time named in the contract, pay off the incumbrance debts on the landing property? Did the city furnish him money to do so? If yes, to what amount? Has Marshall paid back the money?

Int. 12. What were the durations of the quarantines from 1852 to 1862? How many were there? To what boats did the quarantine regulations apply? Was wharfage dues collected as at other times, and by whom? What effects did the quarantines have on the income from wharfage? Was not as much wharf dues collected as there would have been if there had been no quarantine? Did the quarantine regulations apply to any other point than New Orleans, infected with yellow fever?

Int. 13. Did or not Marshall urge the city council to adopt the quarantine? And did he make then a condition that he would claim for lost time?

Int. 14. Did Marshall continue collection of wharfage dues after the expiration of his term of 10 years? If yes, for how long?

Int. 15. Do you know anything of Mr. Marshall giving to the mayor or other municipal officer a written surrender of the landing property, and therein abandoning all claim for damages for any cause? If

387 yes, state fully your knowledge, and what became of such paper.

SIMRALL AND YOUNG,
For Def't.

Cross-interrogatories to M. Donovan.

1. Do you know if complainant took up his domicil and claimed citizenship in the State of La. in 1866 or 1867, and when in this city boarded with his son-in-law and family?

2. Respecting interrogatory No. 4, direct, state if you knew at the time complainant's creditors, and how much he owed them for the wharf recently purchased, and of their threatening to close the deeds of trust to save themselves, for fear of losing their money, because the city council had set up a claim to his property? If complainant was willing to compromise, was it not because he was hunted down and worn out with unexpected opposition from peculiar sources and preferred it as a last resort?

3. Had you been previously to that time familiar with Mr. C. K. Marshall's handwriting? Did you ever before see a note, letter, or scrap of paper written by him; or did you ever see him sign his name?

4. Is it reasonable to suppose Mr. M. would give up forty or sixty

dollars per month, when almost destitute, for no compensation or offsett whatever?

388 5. Were not the great number of traders in flat-boats generally regarded as damaging to the interests of the regular merchants who rented stores in the city?

6. Why was the ten years of complainant's time to begin three months from the removal of the upper wharf-boat called the "Gov. Jones," and was it not to throw the responsibility of closing up the whole business on Messrs. Fraisse and Rowe, who kept said boat? Did the city appropriate a thousand dollars in scrip to Fraisse and Rowe, through C. K. Marshall, for erroneously assessed taxes, pavements, or mail contracts, or for any cause, and what?

7. If complainant did not comply with his contract with the city, state in what he failed, and did not the city council, by their committee on landings, cause all the failure? State fully.

8. Did you ever compare the wharfage reports of years and seasons of epidemic and quarantine with healthy seasons; and if so, state the result of your investigation. Did the city own the wharf at the foot of Depot street (where the cotton landing was designated) in 1855; and when New Orleans packets were allowed to that wharf, who had the exclusive right to the wharfage?

389 9. If C. K. Marshall urged city council to establish quarantine, in what way did he do it? Was it by putting his name to a petition, in common with his fellow-citizens, recommending such a measure as desirable on the score of humanity?

10. Did or did not W. Porterfield drop his wharf-boat below the boundaries contracted for, in the spring of 1852, and did not complainant threaten to sue the city for the cancelation of the contract if the boat was not replaced? And was not the wharf-boat at once replaced? State fully.

11. What became of W. E. Thomas, Mr. Marshall's authorized collector? And after he was gone, who attended to his business? State if John Bond ever acted for the mayor in 1862 as city collector. And state, if you know, what the wharfages were after the city took possession of the landing.

T. A. MARSHALL,
For Compl't.

In the United States circuit court for the southern district of Mississippi.—In equity.

C. K. MARSHALL
vs.
THE MAYOR AND COUNCIL OF THE CITY OF Vicksburg.

The deposition of MICHAEL DONOVAN, a witness in the above-
390 named case, taken before Lazarus Lindsay, a commissioner for said court, at his office in the city of Vicksburg, in the State of Mississippi, by consent of parties, and on the interrogatories and cross-interrogatories hereto annexed:

Said witness, Michael Donovan, being produced, sworn according to law, and examined, answers as follows:

To the direct interrogatories he saith as follows:

Answer to first interrogatory:

1. I know the parties to this suit and the subject-matter: have known

C. K. Marshall since 1835; Vicksburg is his domicil and residence. I know his family has resided there, and think he has for 20 years last past. He and they have resided on Grove street, in Vicksburg, since 1865. I do not know that he has changed his domicil or residence except by hearsay.

Answer to second interrogatory:

II. My age is about 52 years; have resided in Vicksburg since 1835. I was a member of the city council of Vicksburg for the years 1851, 1853, 1854, 1860, and 1861, up to March, 1862. I think I was also a member for 1858 and 1859.

Answer to third interrogatory:

III. I have been very familiar with them.

Answer to fourth interrogatory:

391 IV. I was in the council when the compromise agreement referred to was made. I am familiar with the terms of that contract. Said Marshall was willing to the making of said contract. It was his own proposition.

Answer to fifth interrogatory:

V. I was present when the ordinances referred to were passed in 1853; I was also present when they were under consideration. Said Marshall knew of the terms of said ordinances; he did consent to them; he drew them up and brought them to us, and we passed them. The rates of wharfage were five dollars per week for all packets terminating their trips at Vicksburg, no matter whether they made a trip every day or only once a week. Mr. Marshall, the complainant, had knowledge and agency in the passage of said ordinances. The rates were fixed for his interest and at his request, and for his benefit.

Answer to sixth interrogatory:

VI. Mess. E. S. Crawford, A. H. Arthur, William F. Markham, Michael Donovan, John W. Buck, O. O. Woodman, W'm H. Sparke, were members of the council in 1851, when the compromise agreement was made. The same gentlemen were members when the wharfage ordinances were passed. There was also another ordinance passed on the subject of an ad valorem tax to be levied on flat-boats, keel-boats,

392 barges, and other water craft, passed June 7, 1852. The members of the council when this ordinance was passed were Mess. Crawford, Arthur, Buck, and Woodman, above mentioned, together with Mess. T. A. Marshall, G. H. Cabaniss, and E. E. Bruner. Mr. T. A. Marshall was the council of C. K. Marshall, and drew up the compromise agreement and contract, and was also chairman of the judiciary committee of the council when this ordinance was passed, and it cannot be possible that he would have allowed a violation of said agreement or contract.

Answer to seventh interrogatory:

VII. There was no wharfage put on flat and keel boats by the city. The city put a tax upon these boats of one dollar, giving them the privilege of two days to sell out their whole loads; if they stayed longer, an ad valorem and license tax were put upon sales. I think this tax was for general city purposes. It did not conflict in any way, shape, or form with Mr. Marshall's wharfage tax on the same boats.

Answer to the eighth interrogatory:

VIII. Mr. Porterfield, and afterwards Mr. B. J. Butler, collected the wharfage from steamboats; Mr. W. E. Thomas and Mr. John Bond collected from flat-boats and other water craft; they collected for Mr. Marshall; they were his appointees, and confirmed by the city

393 council so as to give them authority.

Answer to the ninth interrogatory:

IX. The city did comply with her contract with Mr. Marshall during his term of 10 years, and did what she agreed to do, and more than the contract required. No ordinance was passed by the city that I know of, interfering with or interrupting Mr. Marshall's wharfage dues, or with their collection. Nor did any of the city officers so interrupt or interfere, that I know of.

Answer to the tenth interrogatory:

X. Mr. Marshall, shortly after the compromise agreement was made, did represent to the city his inability to carry it out, and the city aided him with money, I think on two occasions, and in the year 1852. By whom the money was paid I do not know, but believe it was paid by the mayor. The object for which it was paid was, to the best of my recollection, for the purchase of the Gov. Jones, the upper wharf-boat, and to liquidate some claims held by W'm S. Bodley against C. K. Marshall. I cannot remember the dates and amounts, but am satisfied the money was paid.

Answer to the eleventh interrogatory:

XI. Mr. Marshall did not, in the time named in the contract, pay off the incumbrance debts on the landing property. I cannot say positively that the city did furnish money to enable Marshall to do so, but
394 such is my impression. I cannot say what amount, nor do I know that he has paid any back.

Answer to the twelfth interrogatory:

XII. There were quarantines established in 1853, 1855, and 1858. They only applied to boats ascending the river. Wharfage dues were collected during those quarantines, as at other times, and by Mr. Marshall's agents. The quarantines had no effect on the incomes from wharfage, except as concerned boats infected with yellow fever. If they had a clean bill of health they were allowed to land. I do not think as much wharfage was collected as there would have been if there had been no quarantine, because, during the time of yellow fever in New Orleans, not near as many boats travelled on the river as at other seasons. The diminution of wharfage was not attributable to the quarantines, but to the sickness in New Orleans. The quarantines at Vicksburg only applied to New Orleans and points below Vicksburg which were infected with yellow fever.

Answer to the thirteenth interrogatory:

XIII. Mr. Marshall did urge the city council to adopt the quarantines, but he did make any condition that he would claim for lost time, and the city could not move the wharf-boat down to the quarantine
395 ground without Mr. Marshall's and Mr. Porterfield's consent, which they gave without condition. The wharf-boat was only moved in 1853. The durations of the quarantines in the three years spoken of were from about the middle of September to the first of November. In 1853 I think it commenced about the first of September.

Answer to fourteenth interrogatory:

XIV. Mr. Marshall did continue the collection of wharfage dues for several months after the expiration of his term of ten years.

Answer to fifteenth interrogatory:

XV. I do not know of my own knowledge, but only from the hearsay of other parties.

M. DONOVAN.

To the cross-interrogatories he saith as follows:

Answer to first cross-interrogatory:

I. I do not know anything of the kind, nor do I believe he ever lived in Louisiana.

Answer to second cross-interrogatory:

II. I know that he owed creditors a large amount, but do not know of any pressure by them upon him, nor of any threats of theirs to close the deeds of trust referred to. I do not know that the willingness of complainant to compromise was on account of any of the reasons
396 mentioned in this cross-interrogatory. I do believe that he has always been pressed by his creditors, and is so to the present day.

Answer to the third cross-interrogatory:

III. I was not familiar with his handwriting, nor do I remember seeing his handwriting or signature prior to 1851. Since that time I have been familiar with both.

Answer to the fourth cross-interrogatory:

IV. I do not know that any one ever asked him to give up $40 or $60 a month, when in a destitute condition.

Answer to the fifth cross-interrogatory:

V. They were not so regarded. On the contrary they were considered an advantage both to the city and the merchants.

Answer to the sixth cross-interrogatory:

VI. The three months were allowed to enable the complainant to Mess. Fraisse and Rowe out of the way, and to get clear of the "Gov. Jones." The responsibility of the whole business rested on the complainant, and not on Fraisse and Rowe. I do not know of any appropriation whatever to Fraisse and Rowe, but I know that the city appropriated $1,000 to C. K. Marshall, but for what purpose I do not know; but believe it was to enable him to get rid of Fraisse and Rowe.

Answer to the seventh cross-interrogatory:

397 VII. Complainant failed in his contract with the city, in not paying the mortgages upon the property at the times specified; and also in not giving up the property at the expiration of the time mentioned in said contract. The city council made no failure on their part, that I know of.

Answers to the eighth cross-interrogatory:

VIII. I have never compared particularly the wharfage reports for the years and seasons spoken of. There is certainly not as much travel or steamboat business in seasons of epidemics, and no flat-boats in such seasons, or very few. The city did not own one hundred and sixty feet north of Depot street, but did own north of that again 503 feet. Mr. Marshall had the exclusive right to the wharfage during the term of the contract.

Answer to the ninth cross-interrogatory:

IX. Mr. Marshall certainly sanctioned the establishment of quarantine. I think he came before the council and sanctioned it, as well as giving a written sanction.

Answer to the tenth cross-interrogatory:

X. I have no knowledge upon the subject referred to.

Answer to the eleventh cross interrogatory:

XI. I think Mr. Thomas went to Illinois in 1861 or 1862, and after he left Mr. Bond attended to Mr. Marshall's collection business. I
398 do not know that Mr. Bond ever acted for the city or the mayor as city collector. I do not know what wharfages were collected from 1862 during the war. I know what wharfages were collected since

1865; ten dollars from each transient steamboat, and ten dollars a week from each packet; there were few flat-boats on the river up to 1869, and the wharfage varied on them from one to five dollars, according as the council changed the city ordinances.

M. DONOVAN.

STATE OF MISSISSIPPI,
Southern District, City of Vicksburg, ss:

I, Lazarus Lindsay, commissioner of the United States circuit court for the district and State aforesaid, do hereby certify that Michael Donovan, the witness who signed the foregoing deposition, was by me duly and legally sworn; and that on oath he states that the answers to the interrogatories and cross-interrogatories, hereto annexed, are true to the best of his knowledge and belief; and that he signed the same in my presence, at my office in the city of Vicksburg, in the State of Mississippi, on this fourteenth day of March, A. D. 1870.

LAZ. LINDSAY,
U. S. Com'r.

(Endorsed:) N. S. 29. C. K. Marshall vs. The Mayor and Council of the City of Vicksburg. Deposition of M. Donovan for defendants.

399 Filed and opened in open court March 15, 1870.
GEO. T. SWANN, *Clk.*

Final decree.

And now afterwards, to wit, at a special term of said circuit court of the United States for the southern district of Mississippi, begun and held in the court-room at Jackson in said State, on the 10th day of March, A. D. 1870, and on the 25th day of March, 1870, a day in said special term of said court, the following final decree was rendered by said court in this cause, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court, special term, March, 1870.

CHARLES K. MARSHALL
vs.
MAYOR AND COUNCIL OF THE CITY OF VICKSBURG. } N. S. 29.—In chancery.

Be it remembered that this cause came on to be heard at a former day of this term before the Honorable Robert A. Hill, judge, &c., upon the bill, amended bill, answer, exhibits, and proofs in the same, and now at this day, the court being sufficiently advised, and because it appears
400 to the satisfaction of the court that the defendant is indebted upon a proper accounting to the complainant in the sum of seven thousand six hundred and ninety dollars and sixty-seven cents; the court therefore orders, adjudges, and decrees that the complainant shall recover of the said defendant, and that the said defendant shall pay to the said complainant, within six months from this date, the said sum of seven thousand six hundred and ninety $\frac{67}{100}$ dollars, together with interest thereon at the rate of eight per cent. per annum till paid; and in default thereof that execution issue, &c. The court further orders and decrees that the defendant pay the costs of this suit to be taxed.

Ordered, adjudged, and decreed this 25th March, 1870.

R. A. HILL, *Judge, &c.*

And on the day and year last aforesaid, to wit, at the said special term of said court begun and held on the 10th day of March, 1870, and on the 25th day of March, 1870, the following order, granting an appeal, was made in this cause by said court and entered on the minutes thereof, to wit:

C. K. MARSHALL
MAYOR AND COUNCIL OF CITY OF VICKSBURG. } N. S. 29.—In equity.

Complainant, feeling himself aggrieved by the decree herein,
401 asks for an appeal to the next term of the Supreme Court, which is granted upon his entering into bond, in the penal sum of five hundred dollars, with Thomas Green as his security, conditioned that he will answer all such costs as may upon an affirmance of said decree be adjudged and decreed to the appellees, The Mayor and Council of the City of Vicksburg.

And on the 1st day of April, A. D. 1870, the following appeal bond was filed in this cause, to wit:

Know all men by these presents that we, Charles K. Marshall and Thomas Green, are held and firmly bound unto the Mayor and Council of the City of Vicksburg in the penal sum of five hundred dollars, for which payment, well and truly to be made, we bind ourselves, our heirs, &c., jointly and severally, firmly by these presents.

Given under our hands and seals this 1st day of April, in the year 1870.

The condition of the above obligation is this, whereas, in the suit pending in the circuit court of the United States for the southern district of Mississippi, being No. 29, N. S., in equity, wherein Charles K. Marshall was complainant and The Mayor and Council of the
402 City of Vicksburg were defendants, a final decree was rendered on the 25th day of March, in the year 1870, from which decree the said Marshall prayed and obtained an appeal to the Supreme Court of the United States upon executing this bond:

Now, if the said Marshall shall answer all such costs as may upon an affirmance of said decree be adjudged and decreed to the said Mayor and Council of the City of Vicksburg, and against said appellant, then this obligation shall be void; otherwise it shall remain in full force.

C. K. MARSHALL. [SEAL.]
THO'S GREEN. [SEAL.]

Filed April 1st, 1870.

GEO. T. SWANN, *Clk.*

403 UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

I, George T. Swann, clerk of the circuit court of the United States for said district, do hereby certify that the foregoing and annexed four hundred and two (402) pages contain a full, true, and complete transcript of the record of the final decree between the parties therein named, with the appeal therefrom, together with a true and correct copy of the appeal bond filed and approved therein, as the same remain of record and on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Jackson, in said district, this 19th day of August, A.

D. 1870, and of the independence of the United States of America the 95th.

[SEAL.] GEO. T. SWANN, *Clerk.*

[5 cent internal revenue stamp, canceled.]

Transcript fee of clerk paid by appellant, (ninety-one $\frac{20}{100}$ dollars,) as per stamped receipt given to him of this date, August 22d, 1870.

GEO. T. SWANN, *Clk.*

(Indorsement on cove .) No. 484. Charles K. Marshall, appellant, v. The Mayor and Council of the City of Vicksburg. S. Mississippi C. C. U. S.

Filed 16th September, 1870.

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Supreme Court of United States.

CHARLES K. MARSHALL,
vs.
CITY OF VICKSBURG.

Brief of P. PHILLIPS,

For Appellant.

The present appellant filed his bill on 10 November, 1867, against the appellee in the Circuit Court United States for the Southern District of Mississippi.

The bill alleges that the complainant being the owner of certain real estate within the corporate limits of Vicksburg, embracing a portion of the land fronting on the Mississippi, was induced, under the circumstances set forth in the bill, to enter into an agreement on 21 November, 1851, with said city, by which for the consideration therein mentioned, he conveyed said property, Copy of agreement p. 11.

The bill assails this agreement as being without consideration, and under the circumstances stated inequitable, and if not so, as forfeited by the violations of the conditions and stipulations imposed by it on the city. p. 4.

By the terms of this agreement the complainant was to have for ten years "the wharfages on steamboats according to the rates stipulated in the lease to Thomas

Potterfield." The rate of other water crafts to be determined by the city—provided that the same shall not be less than then customary. The Potterfield lease is copied p. 15, and by this, each steamboat being a regular packet was to pay "for landing or touching at the wharf or landing, five dollars for *each trip*."

The bill charges that in violation of this agreement the city by ordinance of 7 February, 1852, established the wharfage at five dollars *per week*. p. 5.

That by its ordinance of 7 June, 1872, it levied a charge for landing on flat boats and other water craft of one dollar, which it refused to pay over to the complainant. p. 6.

The bill further charges that he has been deprived of the benefits intended to be secured by the agreement by the quarantine enforced by the city in the years 1853, 1854, 1855, 1858. These quarantines amounted in the aggregate nine or ten months, during which no boats were permitted to land, and this he claims should be added to the time, so that he might have the full ten years stipulated for.

Further, the bill charges, that the complainant was deprived of the benefit intended to be conferred by the agreement from the latter part of April, 1861, by means of the late civil war, and has not been permitted to enjoy it since.

The loss of time thus occasioned, it is claimed, should be added, to wit: ten months for the quarantine, and from 1 May, 1861 to 1 May, 1862 for the war, so that when the City took possession on the 1 February, 1862, the said term by a just interpretation of the agreement had twenty to twenty-four months to run.

The bill at p. 9 charges many other violations of the

agreement by the City, by reason of which it is claimed that the City has forfeited the title to the property conveyed therein, and that the same is reinvested in complainant.

The bill then prays for an account of the amount of wharfage collected, and that the City be compelled to discover what it has received—that the agreement be cancelled and the property restored to complainant, to which is added a prayer for an injunction and a receiver—"and if mistaken in his rights as above set forth—the complainant prays for such other and general relief as his case requires, and as may be just and equitable."

The defendant demurred to the bill on the several grounds stated at p. 18—and the demurrer was sustained, as to so much of the bill as seeks to vacate the deed, and a restoration of the property on the ground of its invalidity or forfeiture of title, but the demurrer was overruled and the bill maintained—for compensation for breach of covenants in withholding wharfages. p. 19.

On leave given the bill was amended at p. 27, as follows:

If the complainant is not entitled to rescined and annul the contract on the facts stated, then he prays for a decree that there shall not be computed against him as a part of the period of ten years for which he was to have the enjoyment of said wharf and landing, the time he was interrupted in the enjoyment of the same by reason of the quarantine, or the period of time in which his enjoyments was interrupted by reason of the blockade and the war. He prays that such time shall be ascertained by a commissioner of this Court, and that the city should account for the rents and profits realized from said wharf for that period of time to commence and to be computed from the time said city, after the termina-

tion of the war, took possession of said wharf, and begun to collect wharfage and tolls for the use of the same, or if not charged with such rents—that the wharf may be put into his possession to be retained by him, and the wharfage collected for the period of time he was interrupted in the enjoyment, thereof so as to make full ten years of enjoyment by him.

The answer of the city is found at p. 20—denying the allegations of the bill—and the replication at p. 27.

The examination of witnesses extends from p. 28 to p. 154.

On the 25 March, 1870, a decree was entered in favor of the appellant for $7,690.67, the said sum to be paid within six months from the date of the decree, with interest at the rate of eight per cent., and in default thereof an execution to issue. (p. 154.)

From this decree the appellant takes his appeal, and here assigns for error.

First. The sustaining of the demurrer.

Second. The rendering of the decree without a reference to the master, whereby on exceptions the grounds of the decree might be made to appear.

Third. The inadequacy of the amount allowed as shown by the proof.

Fourth. The refusal to grant the relief prayed for in the amendment to the bill.

The demurrer.

The agreement by which the property was conveyed provides, that if the right to collect the wharfages be interrupted or defeated permanently by the City, "all the property conveyed, shall immediately revert to said

Marshall, his heirs and assigns, and be as fully and absolutely his, as if this deed had never been executed." p. 13.

The bill sets forth this interruption and claims the reinvestiture. The demurrer admits the truth of the allegations.

The bill also seeks a discovery, and prays for an account of the rents and profits, and for general relief.

The discovery and account being clearly within the equity jurisdiction, the Court will go on and give all the relief the party is entitled to.

Franklin Ins. Co., v. McRae, 4 Greene, 229.

Kelsey v. Hobbs, 16 Pet. 269.

Souders' appeal, 57 Pen. St., 498.

Corley v. Bean, 44 Mo. 379.

On this view the party would be entitled to all the wharfages accruing prior to the time when the City forfeited its title to the property, and also to a decree directing a reconveyance by the City—that this cloud might be removed from the complainant's title. This is grantable under the prayer for general relief.

Reference.

There should have been a reference to the master. The reason for having a report and proceeding by exception, is—that the ground upon which the decree goes may appear upon the record.

2 Daniels' C. P., 1193.

Jenkins v. Hiles, 6 Ves. Jr., 646.

Kelsey v. Hobbey, 16 Pet., 276.

Beverly v. Lawson, 3 Munf., 317.

In this case there are several and distinct claims for compensation, and the rendition of the decree, without a master's report obstructs the exercise of the revisory jurisdiction, as by its generality it is uncertain which of the claims was allowed or which rejected.

Flat Boats.

W. E. Thomas, at present residing at Richview, Ill., was from '53 to '61 collector of wharfages at Vicksburg. He kept a regular register of all the landing. He testifies that during that period 3,348 flat boats landed; and that the City levied and collected a landing fee of $1.00 on each boat, this was retained by the City, and against the protest of Marshall who claimed he was entitled to the same.

The ordinance, 7 June, 1852, p. 90, requires the wharf or harbor-master to collect from any "flat boat, &c.," a fee of one dollar "for the privilege of landing," and directs that his "receipt for the said landing fee" shall entitle the party to the privilege of selling his cargo at retail for two days.

That the tax thus levied should have been properly paid to Mr. Marshall, is abundantly shown in the opinion of W. C. Smedes, Esq., given on the 27 April, 1863, at p. 92.

If the construction thus given to the agreement and to the ordinance is the correct one, then the amount due to the complainant on this item alone, with the Mississippi rate of interest, would nearly equal the sum decreed.

Steam Packets.

Again, by the terms of the agreement, steam packets

were to pay for landing $5 per trip—while the City, by ordinance, established the rate of $5 per week.

Metzler, a steamboat man, being asked how many trips a week were made by the Yazoo Packets between the years 1851 and 1861, and how many boats made over one trip per week and under, answers that the Yazoo Packets made three trips per week; sometimes two to four boats made one or more trips to per week from Yazoo city, and above.—They generally paid $5 per week. (p. 47.)

Thomas testifies to this practice, and that the City refused to permit him to collect the $5 per trip, and that complainant notified the City he would hold it responsible therefor. p. 41.

Metzler is asked on cross-examination if he could state the number of packets from 1851 to 1861, and answers—that from September to June from two to four a week, and the balance of the year from one to two a week.

Springer, a steamboat captain testifies that there was one Yazoo Packet, that from 1851 to 1861, made three trips per week, and another boat two trips per week for a portion of the summer time. p. 57.

Bryson, a witness examined by the City, and who was Mayor from 1848 to 1853, in answer to 5 cross-interrogatory, says he knows of no compromise or surrender made by Marshall in reference to his right to five dollars per trip, and does not suppose that he would voluntarily give away $40 or $60 per month without consideration. p. 131.

Marshall testifies that his losses from this cause, amounted to from $40 to $60 a month for the greater part of each year for eight years. p. 68.

If we confine ourselves to the single packet described

by Springer—making three trips per week and paying $5 per week instead of fifteen—we have the result of a loss of $10 per week, or $40 per month, or $480 per year, equal to $4,800 for ten years, and this at interest would nearly equal the amount of the decree.

Quarantine and War.

Coming now to the compensation of loss of time, say ten months by reason of the quarantines, and one year by the civil war we find the facts undisputed, but the liability of the City to make good this loss is denied. This, like the question of the charge on flat boats, is a legal question. In the latter case we referred to Mr. Smede's opinion as argument; he was counsel for complainant. On the present question we refer to the opinion of Messrs. Merwin & Young, the counsel of the City, in response to a submission made by the City, to be found at p. 99.

In this opinion the counsel for the City say, "It is clear both from the express letter and spirit of the contract, that the City is obligated to complete the receipt of the wharfage to the said Marshall, for a period sufficient to complete the term of ten years. It is for your board to determine whether or not $6,597.55 the amount Marshall is willing to receive in compromise of his claim against the City, would exceed the amount he would be entitled to by the collection of wharfage for a period long enough to complete the ten years. If this amount is not in excess of that, it is clearly to the interest of the City to accept the terms proposed."

"We have examined this question with the care that is due to the interest involved, and are clearly of opinion that if said Marshall will give a full acquittance and

release of his claim against the City for and on account of wharfage, both for the period of the quarantine in the year 1853, '55 '58, and also on account of the blockade of the river during the war, that the City will save itself ruinous and expensive litigations by taking up the note held by Kleim, and thereby comply with the letter and spirit of its obligation."

The particulars of this proposed compromise and the inducements which led to the offer of it are set forth in Marshall's deposition in answer to the 10th interrogatory p. 69.

It is submitted that the construction put upon the agreement by the counsel of the City is the correct one. Nothing could be more explicit than the language used—"if the right to collect wharfage be suspended for any period by the intervention of third parties, the time of such suspension, *shall be added on to the ten years*, it being the intention of these parties, that the said Marshall shall actually receive the rents and wharfages accruing in ten years altogether." p. 13.

The evidence shows that from the establishment of the blockade by Federal authority, in April, 1861, all commerce from above was entirely cut off, and that the ascending boats were impressed by the Confederates, and, as being in their use, refused to pay wharfage. From such excerpts from the Collector's registry as have been collected, the book itself being lost, there is shown, at p. 103, sixteen cases in November and December, 1861, of bills for wharfage endorsed "working for Government, refused payment."

It would seem, therefore, to be clear, that as Marshall was deprived of the receipt of wharfages by "intervention of third parties," he was entitled as prayed in his

amended bill to have the time thus lost "added on to the ten years." The bill prays, "that such period of time shall be ascertained by a *commissioner of this Court*," and that the City account for that period of time, to commence from the time when the City regained possession after the termination of the war, and began to collect wharfages; or, in the alternative, that the complainant be now put in possession, so that he might collect the wharfages for the period of time lost by the interruption.

The agreement made with the City was highly beneficial to it, and most onerous to Marshall.

In 1835, the City set up a claim to the premises by the dedication of Newet Vick. The bill filed by it against the heirs of Vick was decided by the High Court of Errors and Appeals, in favor of the heirs, and the bill was dismissed. The case is reported in 1 How., Miss., 426. Subsequently, the Reverend Mr. Marshall, who had married the daughter of Vick, purchased from S. S. Prentiss and the other heirs the entire interest in the premises. From 1837, when the decision was made in the High Court of Errors and Appeals, the City treated the property as private, and regularly levied and collected all taxes as such, and when default was made sold the same for the taxes due. This continued to 1851, a period of fourteen years, when the City again set up its pretension to a dedication by applying to the Court to be permitted to intervene in a suit then pending between Lane v. Vick et al., for the purpose of asserting this title. The case was before this Court and decided at the January Term, 1845. 3 How., 476.

The suit of Lane was merely a controversy between the heirs, complainants, and defendants, for a partition of the lands. In such a suit there was no room for the

intervention of a third party claiming title adverse to both complainants and defendants.

But the assertion of the right was itself sufficient to alarm the creditors of Marshall, who had become his sureties in making the purchases, and under the pressure of these circumstances, Mr. Marshall was induced to enter into the agreement by which he parted with the fee simple to this very valuable property for the privilege of collecting wharfages for ten years.

P. PHILLIPS,
Of Counsel for Appellant.

WASHINGTON, 2 *December*, 1872.

Supreme Court of the United States.

CHARLES K. MARSHALL, Appellant,
v.
THE MAYOR AND COUNCIL OF THE CITY OF VICKSBURG.
No. 11.

BRIEF OF R. M. CORWINE, for Appellant.

In addition to the brief of my associate, Mr. Phillips, I take leave to submit the following views, viz:

1st. The circuit court erred when it sustained the demurrer to so much of the bill as prayed for a forfeiture of the contract of the 21st November, 1851. (Vide Record, pp. 10, 11, 12, 13, and 14.)

Having properly obtained jurisdiction of the case to take and state the accounts between the parties, by reason of their complicated character, the court could maintain it to consider and settle all matters of dispute and litigation between the parties, more particularly where they grew out of the same transactions. (Hawley *v.* Cramer, 4 Cowen, 717; 2d Bibb, 435.)

But they could maintain jurisdiction for another reason. A party having a right of possession, by force of the covenants in a written instrument, of which he is unjustly deprived by the acts of the other party, may apply to a court of chancery to compel such other party to make the surrender, and enjoin him from further interfering with the complainant in his enjoyment of such property. In *this* case his *right* is established, and he invokes chancery to enforce it, in connection with a general settlement of all matters growing out of this one transaction.

2d. Appellant is entitled to be paid at the rate of $5 *per trip* for the steamboat packets landing at the wharf, during the entire ten years. Whilst there is a dispute as to the fact and the amount of money due on this account, I presume it will not be questioned that the proof of the defendants, whereby they attempt to show that the appellant consented to the reduction of this particular wharfage, does not in law affect their liability to account for this sum. Appellant's right to it is established by a contract under seal, and he cannot be estopped from claiming the fulfillment of that covenant, except he has released the other party by an instrument, under seal, and for a valuable consideration. Here there was neither a written or a sealed instrument, nor any consideration. The court should have ordered an account to be taken of this claim, and made a decree accordingly.

3d. The attempt of the defendants to get rid of the claim of appellant, that he is entitled to collect wharfage for the full and entire ten years, by proving that he said to divers persons, in 1862, that he no longer had a claim to hold on to the wharf property, as his ten years were up, and that he voluntarily surrendered the same, is answered by the fact that appellant, at no time, executed a proper release or surrender in writing, under seal or otherwise; and as well by the additional fact, that some of these very witnesses say that in these conversations he asserted that he had claims against the city on divers accounts. It is true that Mr. Lindsay (Record, p. 125) says, that Dr. Marshall did execute a paper, in writing, surrendering the wharf, &c.; but it is noticeable that the paper is not produced, nor its contents stated, nor does any other witness speak of its existence, or of ever having seen or heard of it at the time or since. The very persons, whose presence in the Council Chamber, (Record, p. 125,) viz: Smead, Bender, and Auter, Lindsay refers to, fail to sustain his recollection of these circumstances, although by no means unwilling witnesses for the defendants. (Record, pp. 130, 132, 133, 136, 137, 138, 139, 140, 141.)

But, if this will not suffice to show the improbability of that statement of Lindsay, the paper, to be found on pages 106, 107, and 108 of the Record, signed by this man Lindsay, and as well by Bender, with many others, will completely silence it. That paper is dated July 23, 1866, long after the time when this pretended written surrender is said to have been made, and is silent on this subject, and utters not one word in reference to it; but, on the contrary, the appellant's case is stated with great force, and its entire equity fully recognized and urged upon the people of Vicksburg. It is not easy to reconcile this paper and Mr. Lindsay's statement.

But I apprehend no great consequence need be attached to this fact, were it ever so true, that any paper writing, such as is claimed, was executed by Dr. Marshall; because it is not pretended by Mr. Lindsay, or anybody else, that Dr. Marshall released his *claim for lost time*, for the wharfage due on account of the Yazoo packets, and for the flatboat wharfage. It is not claimed that it contained any language which could be tortured into a release of these claims; on the contrary, what Lindsay does say about the claim of appellant would seem to imply that Dr. Marshall actually did then, as he had done all along, insist that the city was largely indebted to him on these very accounts. (*Vide* Record, p. 126.)

But if there was a surrender executed in writing, it does not appear that it was under seal, or that it was signed and executed by Dr. Marshall and his wife, or whether it was acknowledged before a proper officer. The proof is very weak, if not wholly defective, as showing that there was sufficient diligence observed in searching for this alleged surrender, in order to lay the foundation for this secondary evidence. But I pass that by, and come to remark upon another statement of Lindsay. He says that there were three months' extension of time given Dr. Marshall. This statement is wholly unsupported. Dr. Marshall expressly denies it, as he does the statement about the surrender, and not one of the witnesses called by the

defendants speak of it. It is true, Auter says the surrender was made to *him*, as Chairman of the Landing Committee; but he says this was about *four weeks after his* (Dr. Marshall's) *term expired.* (*Vide* Record, p. 115.) From this it would appear that Dr. Marshall must have made at least two surrenders: one two months before the other, and one in writing and the other verbal. Which do the defendant's rely upon?

But the communication of the attorneys of the city of Vicksburg to the City Council, (Record, pp. 99, 100,) puts an end to all doubt on the subject. That paper, written at the instance of the city authorities, with all the evidence before these attorneys' furnished by their clients, makes no allusion to this written surrender deposed to by Lindsay.

4th. There can be no doubt that appellant was entitled to have the full ten years provided for in the contract of November, 1851. (*Vide* Record, p. 13.) The proof is full that he did not have ten years' enjoyment: 1st. The quarantine established by the defendants deprived him of ten months, and the interruptions to river commerce, caused by the war, suspended this revenue for twelve months. The first was the act of the defendants themselves, and the other was the act of third parties. Both were effectual to deprive the appellant of his revenues for the periods named. The agreement provides for the mode of compensating him for the lost time, and that provision is as follows, viz:

"It is expressly agreed by the parties hereto that, if the 'right to collect wharfage be suspended for any period by 'the intervention of third parties, the time of such suspen- 'sion shall be added on to the said term of ten years, it 'being the intention of these parties that said Marshall, his 'representatives and assigns, shall actually receive rents 'and wharfage accruing in ten years altogether, and no 'more." (*Vide* Record, p. 13.)

Thus the right of appellant to the full enjoyment is provided by the letter as well as the spirit of the agreement, where the interruption of this enjoyment is occasioned by

the act of third parties. The interruption of the war is such a cause.

Hackett *v.* Pattle, 6 Madd, 4.
May *v.* Bennett, 1 Russ. R., 370.
Semmes *v.* Hartford Ins. Co., 13 Wall., 158.
Wheaton Int. Law, 305, *et seq.*

It is equally as clear that, where the interruption is occasioned by the act of the defendants, appellant has the same right to have his time extended to the extent of such interruption. These are law questions, so plain and so well understood on principle and authority, as not to require citations to support them, further than appear above and in the brief of Mr. Phillips.

I do not stop to consider the effect of the testimony of defendants, that Dr. Marshall consented to or requested the quarantine. I doubt not, *as a citizen of Vicksburg*, he did so; but in the absence of any legal agreement on his part that he waived his right to demand recompense for the time thus lost to him, I apprehend he would not be estopped from making the claim now. His individual right was not lost by this general acquiescence in the quarantine regulations.

5th. I hardly think there can be any doubt as to Dr. Marshall's right to have an account of the wharfage collected from flat-boats and other water craft. The agreement grants such wharfage to Dr. Marshall, but leaves the city to fix the same. The rates should be the same as were then prevalent. But, under all the circumstances, the City Council was bound to levy a wharfage tax. They could not omit to do so without violating this covenant. Any wharfage, therefore, assessed was for the benefit of Dr. Marshall. The city could not levy a wharfage tax and call it a merchandise tax, unless they paid it to Dr. Marshall. The city did levy a tax of one dollar on this discription of water crafts, (Record, p. 89,) and that must be adjudged to belong to Dr. Marshall. The court should have ordered an account to be taken of this item.

R. M. CORWINE,
Of Counsel for Appellant.

WASHINGTON CITY, *Dec.* 3, 1872.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

CHARLES K. MARSHALL, Appellant,
vs.
THE MAYOR AND COUNCIL OF THE CITY OF VICKSBURG.

BRIEF FOR THE APPELLEE.

The bill in this case was filed to set aside a deed of conveyance, made by Marshall and wife to the city of Vicksburg, of certain property in that city, on the ground that it was without consideration; or to declare and enforce a forfeiture incurred under the covenants in the deed, and for the restoration of the property to Marshall, together with such of the income of the same as had been received by the city.

The deed was made in 1851. At the time of its execution, a litigation respecting the title to the property, was pending between certain parties and the city of Vicksburg, in the Circuit Court of the United States. The city claimed under a dedication for public use. The opposing parties claimed under the will of the donor. Marshall, by purchase, had become the owner of the title of the parties claiming under the will, and the litigation was being conducted for his benefit. In consideration that the city would surrender her title to certain portions of the property, then in dispute, to Marshall, and relinquish the contest in court, by withdrawing from the suit, and make and adhere to certain regulations, to be particularly noted hereafter, Marshall and wife conveyed absolutely in *fee* to

the city, the particular property in contest in this case, to be used as a public wharf and landing—reserving to Marshall the income from wharfage and rents for the period of ten years. See deed, record, p. 10.

By the covenants in the deed, the city bound herself to keep the public landing within the limits of the property conveyed, to regulate and enforce, by proper legislation, the collection of wharfage, and was to pass, contemporaneously with the execution of the deed, an ordinance fixing the rates according to a prescribed standard, which ordinance was to be irrepealable during the said ten years. The deed contains a covenant against the acts of third parties suspending Marshall's *right* to collect wharfage for any period, and prescribing that the time of such suspension shall be added to the ten years, and a covenant that if the right to collect wharfage or rents shall be interrupted or *permanently* defeated by the act or agency of the city, the title shall be forfeited and revert to Marshall.

The chief grounds of complaint set up in the bill are, as it will appear, that the city established quarantine regulations, which interrupted the landing of boats, and the breaking out of the civil war, which resulted in the blockade of the river. The bill admits that the quarantine regulations were established with his consent. Minor causes of complaint are that the city collected under the name of a landing fee, wharfage, and refused to pay it over, and reduced the rate of wharfage on packet boats below the rate established by the contract.

To the bill, the defendants filed a demurrer, p. 18, assigning seven causes of demurrer. The first five assignments, setting up defects of bill as a bill to rescind a contract, and as a bill to enforce a forfeiture for conditions broken, while the two last, 6 and 7, relate to so much of the bill as relates to the claim for pecuniary compensation. The court below sustained the demurrer as to so much of said bill as seeks to vacate the deed, or to establish for-

feiture and for restoration of the property, but retained the bill as a bill drawing pecuniary compensation. (See record, p. 19.) The complainant had leave to amend his bill, and the amendment is found at p. 27; the amendment is merely of the prayer of the bill, which, in lieu of forfeiture, claims compensation for the time during which the complainant was interrupted by the quarantine regulations and the war and blockade.

To the bill so amended the defendants filed their answer. (p. 19.) The answer denies the allegations of the bill, wherein it charges that the deed was obtained from the complainant by oppression and by instigating unfounded litigation, and points out the consideration which appears on the face of the deed as sufficient to uphold it. Alleges that the quarantine was the act of Marshall, who recommended it. That the war and its consequences are not chargeable to defendants; that the reduction in the rate of wharfage on packets was by Marshall's solicitation; that the landing fee was collected as commutation for a tax on merchandize, which the city reserved the right to levy in the deed; and denies all other acts charged as violating the covenant in the deed, and especially denies the charge in the bill that the city took possession before the term had expired.

Before adverting to the character of the proof in the cause, being of the opinion that the bill cannot be sustained on its face, we propose to consider the bill as on demurrer. We think that without regard to the character of the evidence, (and we by no means regard it as making a case for relief,) the bill states no ground for relief in any aspect in which it may be viewed.

We should state, in this connection, that the city ordinances complained of, are part of the bill. They are referred to in the bill, (see record, p. 6,) as matter of which the court would take cognizance, and the ordinances were read on the hearing of the demurrer. These ordinances

will be found at p. 89, and the reservation in the deed of power in the city to tax merchandize, at the close of page 12.

The bill rests upon two grounds, which, in their nature, are entirely distinct, and, indeed, inconsistent with each other; but as the relief sought is the same in either of the two aspects of the case, they may perhaps be considered as properly associated in the bill, and as we do not consider either ground tenable, we forbear to dwell upon the point. One ground is that there never was a valid conveyance of the title of the property in controversy to the city of Vicksburg. The other is that, though the title was conveyed, the city, by failing to comply with certain conditions on which the title was held, has forfeited it. It is perhaps proper that we should, at the outset, clearly comprehend that these grounds are so distinct that the one does not, in any wise, strengthen the other; that is to say, in considering the sufficiency of the consideration, the fact that the conditions (which were subsequent conditions in their nature) were not complied with, can, in nowise, influence our determination on that point, and, in considering the question of forfeiture, the want of a sufficient consideration in nowise enters into the question.

First. Was there a consideration sufficient to support the conveyance? It is a consummated conveyance in which there was no other act to be done by the grantor, and not an *agreement to convey*. Courts of equity will not set aside a conveyance consummated, merely on the ground that it was without consideration, though it will refuse to enforce an *agreement* to convey, if not founded on a valuable consideration.

Marshall, if he had chosen, might have conveyed the property to the city gratuitously, and no court would set aside the conveyance, because he received nothing for it. (2d Story, Equity Jur., p. 124, §793.) It may, however, be assumed for the purpose of the argument, that in the case

in hand, Marshall did not propose to make a donation to the city, but entered into a bargain, and expected to receive an equivalent for the title he conveyed. He stipulates, therefore, for an equivalent, that is to say, a *quid pro quo*.

Let us, therefore, inform ourselves accurately of the principle which governs courts in determining the sufficiency of a *quid pro quo*. When the parties are fairly matched, and there is no fraud, undue influence, imposition or deceit, the courts never undertake to declare what shall be the practical value of the advantage, whether tangible or speculative, which a man of sound mind is willing to take, on the faith of his own judgment, for the thing he sells.

The courts have no standard. Anything, however slight in value, parted with or forborne, is sufficient. The fact that a man has greatly overrated what he gets, and greatly underrated what he parts with, has no influence. If he obtained what he bargained for, if a man of good sense, the courts allow him to put his own estimate on it, otherwise the freedom of commerce would be destroyed. On these points as well as on the question as to the nature of compromise contracts,

See 2d Story on Contracts, 548, § 449.

1st. Story on Contracts, 145, 6, 7 and 8, § 131, 132.

2 Johns., chap. 28.

2 Randolph, Va., 442.

1 Parsons Contracts, 438, 439, 492.

2 Munford Rep., 442.

1st. Story Equity Jur., p. 266, § 224, 5 and 6.

1st. Vesey, Brown *vs.* Pring, 407 and 8.

Magee *vs.* Catchings, 33d Miss., p. 693.

In the case in hand, Marshall contracted for a surrender of the title of the city to certain property claimed by her, and for the abandonment of the pending suit, in which that title was in controversy. He secured certain advantages by binding the city to keep the landing at a pre-

scribed point, whereby his property was enhanced in value. In one part of the bill, forgetting the broad assertions in the outset, he states that this stipulation was "*valuable*," and gives as a reason that it did enhance the value of the property and invite "*investment*." The city might and doubtless would have established a public landing elsewhere, and directed its policy and legislation, so as to render it a source of revenue. Marshall however secured himself against this contingency. The city was required to shape its legislation according to Marshall's views of his interest, and he judged rightly, that by so controlling the policy of the city, his own property would be greatly enhanced in value, and the income from that conveyed to the city so greatly increased as to pay him the full value of his claim on the property in the ten years. On the first branch of the subject, it is averred in the bill, that the city had no just claim to the property—that her title had been finally adjudicated in the case Rappleye *vs.* John Lane, *et al. vs.* S. S. Prentiss, *et als.*, (which was a proceeding to enjoin an action of ejectment) and pronounced worthless. But it is nowhere stated that Marshall was not fully apprised of this; on the contrary it appears that he was accurately informed, and knew as much about the title as those with whom he dealt. It does not appear that subsequent developments have thrown any additional light on the question of title. It occupies precisely the same condition in which it stood at the date of contract. There was no mistake arising from ignorance, no unfair constraint, deceit or imposition practised upon him.

It is evident that the surrender of the city's claim was of itself a sufficient consideration. It was a case of *doubtful title.* No lawyer would venture to say, that a refusal to grant an injunction to restrain an ejectment, or the dissolution of an injunction, restraining such action, is a conclusive adjudication of the title. If so the decree dissolving the injunction could in the action be set up against

any defence which the defendant might offer, which would be absurd.

The defendant was at liberty to prove title in that action or in any other. The opinion of the judge has simply the force of an argument on the facts before him, and nothing more.

It is well known that the opinion has been overruled in the Supreme Court United States, as to the construction of the will, and it is admitted by the bill that in the circuit court of the United States, the city was admitted as a party, after the decision by the State court, and of course on the ground that the decision was not conclusive. After a decision that the adjudication by the State court on the injunction was not decisive of the question of title, and that there was a *prima facia case* made of title, to justify the admission of the city as a defendant to the bill of John Lane *et al.*, it must be regarded as a case of doubtful title.

After reaping the benefits of the contract, after waiting until the ten years had expired, it would require a monstrous case of fraud to induce the court to interfere.

This disposes finally of the first ground set up in the bill, and that being disposed of, can no longer enter into any other question arising on the demurrer. We now proceed to consider the other ground, to wit: That by breach of the conditions or covenants in the deed, the title of the city has become forfeited. The first thing that strongly attracts attention in this branch of the case, is, that a court of equity is resorted to, to enforce a forfeiture, the forfeiture being claimed by a title purely legal, and against an estate purely legal. This forfeiture is substantially in the nature of a penalty. If there had been a literal breach of the covenant, and the city had come into this court, to be relieved on the ground that the covenantee had received almost the entire consideration; and the deficiency was such as could readily be compensated in

money, we would at once recognize the case as belonging to a court of equity, and of very common occurrance; but as a case to enforce a technical forfeiture in the character of a penalty, it is a stranger and an intruder. Upon this ground alone the bill should be dismissed, even though a case of breach was clearly set forth in the bill. For if there should be any peculiar feature in the case, as for example, the matter of account or any embarrassment in enforcing the judgment at law, a court of equity would still demand that the title by forfeiture should be first established by a suit at law; because the title by forfeiture is regarded with disfavor, and the court could not lend its aid in the first instance to enforce it. (2 Story Equity Jurisprudence—§1314, 1315, 1316.) No instance of a bill by the grantor for compensation in lieu of forfeiture, can be found. Granting, however, for the sake of the argument, and for that only, that a technical forfeiture for a breach of covenant, is a proper foundation to the complainant's title to relief in a court of equity, we proceed to inquire, whether it has been, and if incurred, whether it has not been waived. It is to be observed, that the condition by which the city is to lose the title, is a condition subsequent operating to defeat an estate, and such conditions, as they tend to destroy an estate, are construed with rigor to *prevent* forfeiture. (2 Cruise Digest, chap. 2, p. 27.) An American leading case serves to illustrate the doctrine, (Jackson *vs.* Silvernail, 15 John's Rep., 278.) This was a lease for life, of lands, to be forfeited, if the lessee should sell, assign or transfer or dispose of *his estate* in the lands, without the consent of the lessor. The lessee leased *part* the premises for 29 years, and of course, if this was his right, he might have leased the greater part. The lessor brought ejectment, claiming a forfeiure, and the court said: "The plaintiff's claim is *stricti juris;* and to entitle him to recover on the ground of forfeiture, he must bring his case within the penalty, on the *most literal and rigid*

interpretation of the covenant," and as the "lease of part of the lands in which the lessee had a life estate for twenty years, was not a sale of his whole estate, the court held it was not forfeiture." Now it is obvious the object of the restriction was to prevent the tenant from letting the lands to careless and irresponsible persons, or persons not acceptable to the lessor, and it is equally obvious that substantially by letting all but a small part of the premises for the long term of twenty years without the landlord's assent, the landlord's object was thwarted; but the terms were sell, &c., "his estate," and that meant his whole estate, and not a part. Tested by these principles, was there a forfeiture? The deed provides for forfeiture in one particular event, and no other, and that is if the "right" of "Marshall to collect wharfage or rents be interrupted or defeated permanently through the instrumentality or agency of the city of Vicksburg." It will be observed that this covenant omits the word "for any period," used in the previous one as to "third parties," and it is clear from the terms used and confirmed by this change of language, that the interruption or defeating by the city to make a forfeiture, must have been of that substantial character which would take away the consideration, and by which the very substance of the "right" to collect would be destroyed. The covenant as to confining the public landing within prescribed limits, as to rates of wharfage and other covenants binding to do and to forbear other acts, are covenants, for the breach of which pecuniary damages alone can be recovered in a court of law. No breach of these covenants works a forfeiture, because the courts will never engraft a penalty where none is plainly expressed in the contract. The same may be said of the stipulation, by which the city agrees to compensate by extension of time, for any suspension "for any period" of the right to collect wharfage by third parties. The failure to allow this time, which may be no more than ten days, is not

made a ground of forfeiture by the terms of the contract, and it was clearly not the intention of the parties to give it that stringent effect, and the court will not imply it, for ten days suspension might thus occasion the forfeiture of the whole property. This particular covenant will receive a more extended notice hereafter. These covenants, therefore, the breach of which are not declared to work a forfeiture, do not enter into the questions made by the bill, which relies on forfeiture. Indeed, they are not the foundation for any relief whatever, because there is a plain, adequate and complete remedy at law, for damages, and the city is solvent. According to the principles with which we set out, the breach of these covenants does not amount to interrupting or permanently defeating the right to collect wharfage and rents. It was competent for Marshall to have enjoined the establishment of a public landing at any other point at the time it was attempted, and to have restrained by the same process, perhaps, the city from violating by its ordinance any of the covenants alluded to, but not having resorted to the remedy at the proper time, he is left to his remedy at law for damages, which cannot be awarded by court of equity. We are, therefore, to consider whether a forfeiture accrued under the only covenant which denounced this penalty for its breach. The city, with Marshall's consent, established a quarantine temporarily to prevent the spread of contagious or infectious diseases. This regulation required vessels to land below the city, and required them to pay wharfage. It is alleged that many failed to pay the rate, and that the city used no efforts to compel them to pay. It is manifest that this was not an interruption or permanent defeat of Marshall's "right." It was, indeed, a recognition of it. It was merely on his own showing in the bill, a temporary dimunition of his profits, and does not fall within the terms of the covenant, which is to be construed literally and with rigor. Besides, this quaran-

tine was not in its nature a violation of the covenant. The city had the right to establish it. But a sufficient answer to this part of the bill is, 1st, Marshall assented to it, both as to the establishment of it and the regulation for collecting his wharfage. 2d. According to an established rule, he should have claimed forfeiture or entered for forfeiture. (1 Preston on estates, p. 48.) But if this rule is not to be applied in its strictness, there is another which clearly does apply, and that is, that Marshall waived all claim for forfeiture or for any damage, by acquiesence, by continuing for many years after to receive the profits of his contract. No rule is better established than this. If a landlord, after a breach of a covenant by which the tenant forfeited his lease, does not enter or claim, but continues afterward to receive the rent, he thereby waives his right to forfeiture. (2d Cruise Dig., chap. 11, p. 42, §61.) As it appears from the bill, the quarantine was the joint act of Marshall and the city, and although he asserts that he did not intend to waive his right to compensation, he nowhere pretends that he informed the city that his humane concession was to be paid for. If he had, the city might have refrained from establishing quarantine. On these grounds, the quarantine regulations did not work a forfeiture. It is absurb, indeed, to treat it in that light. This disposes of the only ground of forfeiture definitely and conclusively. Indeed, it is not claimed as a breach, but as entitling him equitably to have the time made up. The bill, however, seems to rely upon a diminution of the profits arising from wharfage occasioned by the blockading of the Mississippi river at Cairo, by the military and naval forces of the United States, and induced by the war of secession, as a foundation of a right to a definite extension of time beyond the ten years, and asserts that the city refused to give him the additional time, and thus defeated his right.

It has been intimated before, that the contract itself

does not attach the penalty of forfeiture to this refusal, and it is clear that it does not. But it is, besides, very evident that the diminution of Marshall's receipts, by the obstructions to commerce, occassioned by a public war, was no breach of the covenant according to its terms.

It was not a *suspension* for any period of his *right* to collect wharfage. He continued to collect it. New Orleans was not taken until after the term had nearly expired. The commerce of all the streams, from Columbus to New Orleans, was uninterrupted; and by the operations of the blockade was greatly stimulated. In addition to this obvious consideration, according to the legal effect of the covenant, its fixed legal meaning, it did not embrace interruptions of this kind, nor any agency, indeed, by which the commerce of the river might be affected. The rules of construction, which are applicable to the covenants against the acts of the city, and of third parties, and the precise extent of the obligations which they impose, are established and defined with a precision not attained, we apprehend, in any other branch of the law; and we cite from the 2d edition of Rawle on Covenants for Title, from page 185 to 189, and notes. The covenants are the usual covenants for quiet enjoyment, embracing the acts of the covenantor and of third parties. [Platte on Covenants.]

This is the exact legal character of the covenants—no more and no less. In regard to them, it is settled that the covenant against the acts of third parties applies only to the *lawful* acts of such parties, under title. In the case of a lease, with such covenants, it is well established that the unauthorized acts of third parties, however mischievous and damaging, do not amount to a breach. The interruption must proceed upon some foundation of acknowledged legal right. As the covenantor undertakes to warrant that his title is such that it is a sufficient protection to the covenantee, and it is supposed that he knows whether his title is sufficient, and his covenant is in effect an

affirmation that there exists no right paramount to his by virtue of which any third party can molest the covenantee in the enjoyment of his rights under the contract. In our own State the distinction has been clearly drawn. (11 Sm. & M., 87, Surget *vs.* Arighi.)

It is absurd to suppose that the covenantor intended to warrant against insurrection or rebellion, or against the consequences of a public war, or against the influences which affect the commerce of the country. Indeed no one could suppose that the city of Vicksburg intended to warrant against any attempt at secession or against General Grant's army, or every possible agency or influence which might tend to diminish temporarily, the income by depressing commerce. These are not *suspensions* of the *right* to collect wharfage. We have a leading case directly in point as to the effect of acts done pending a public war, by the belligerents. The State of New York during the war of the revolution confiscated lands which were held by a party under a covenant for quiet enjoyment. The court decided that this was not a breach of the covenant against the acts of third parties. (Dudley *vs.* Folliet, 3 Term Rep., 544.) Again, it is demonstrated by the language of the covenant that nothing short of total suspension of the *right* to collect wharfage, &c., for a definite time, was contemplated. The covenant is that if the *right* to *collect wharfage shall be suspended* by the intervention of third parties for any period, the time of *such suspension shall be added* on the said term of ten years. Now, it is perfectly manifest that a total suspension for a definite time (for "period" means definite time) of the right to collect was contemplated, and not a mere diminution of the amount of wharfage by influences affecting trade and commerce; because it would be impossible otherwise to estimate the time to be added. Such diminution is not susceptible of being estimated in time. The parties meant a case in which on a particular day, the right to collect

wharfage was taken away, and continued suspended to a fixed time. This definite period could be added to the ten years, and furnishes an exact measure of compensation. This appears too plain for further argument on a condition subsequent and a case of forfeiture. The bill states in an odd way that the city took possession of the wharf in February or March, 1862, although the ten years did not expire until May, 1862, and appointed a harbormaster, but it is quite apparent from the meagre statement, that the city did not do more than they had a right to do. The power to appoint a harbormaster and collector belonged to the city. Marshall had left the State in 1861, and according to his own statement did not appoint any agent or nominate any collector. He does not state that the city received or appropriated the wharfage or rents, but admits that persons pretending to represent him did receive such wharfage. The right to the possession of the property belonged to the city; they were in possession from the beginning. They were to collect and pay over to Marshall or his agents, who had a right to the wharfage. It will be noticed that the bill is careful not to state that Marshall's *right* was interfered with or that the city took his income between February and May, 1862; but when he speaks of finding the city in possession in 1865, he then states that the city *was receiving wharfage.* It is not, therefore, an allegation that the city unwarrantably interrupted or defeated his right; the appointment of an harbormaster is not such an act as of itself affects his rights, and in his absence the city was bound to regulate and control the wharf. It, therefore, appears that in declining to allow Marshall twenty-four months to be added on to the ten years, the city violated no covenant and incurred no forfeiture, and this is decisive of the bill. Clearly there is no equitable considerations which demand that a loss occasioned by the war shall fall upon the city. The contracting parties stood upon an equal footing, and one has no right to impose his losses on the other.

Much importance is attached to the language of contract, 13 record, as to interruptions and suspensions of Marshall's *right* to collect wharfages, &c. It is as follows: "It is expressly agreed by the parties hereto, that if the right to collect wharfage be suspended for any period by the intervention of third parties, the time of such suspension shall be added on to said term of ten years, it being the intention of these parties that said Marshall shall actually receive the rents and wharfages *accruing* in ten years together *and no more.*"

It is supposed that the words "it being the intention of these parties," &c., &c., has the effect to enlarge Marshall's rights beyond the terms of the stipulations or scope of the covenants. To us the words coupled with these which follow rather limit than enlarge his rights. He shall receive what *accrues* in ten years and *no more.*

The object of the various stipulations in the deed touching wharfage, was to secure to Marshall all the issues which should accrue in ten years, and the city machinery was placed at his command for that purpose. The city did not guarantee that the receipts should amount to a particular sum, but that whatever was received should go to Marshall. The amount was subject to be increased or diminished by many influences affecting the commerce of the river. No stipulation is made as to these influences, but the city engages to compensate Marshall if he is by the acts or intervention of third parties *evicted* for any period and deprived of his right to collect what *accrued.* The time of such eviction or ouster of his right to collect shall be compensated, in time. If he should be ousted by the city, then the city agrees to forfeit her title. The use of the words referred to, therefore, do not warrant us in going outside of these express stipulations, or to enlarge their meaning. A lease for ten years is not made longer by the use of the words "for the full term of ten years." As the contract explicitly declares the precise case in

which such compensation shall be made, we cannot go outside of it on the idea that there is an equitable claim to vary the covenants in a deed, so as to make a party responsible in a case not provided for. The whole object of the stipulation was to limit the responsibility to a given case.

If the influence of the war on the commerce of the river was not a breach of the covenant against the acts of third parties, it is impossible to conceive on what ground a court of equity will entail the loss upon the city, and engraft an obligation in the contract not provided for in its terms, and for a purpose which courts of equity have uniformly avoided, to wit: to occasion a forfeiture, to inflict a penalty. Marshall, by his own account, without seeking any redress for ten years, received the full measure of his rights under the contract, and now asks that a court of equity will go beyond the terms of the deed, in order to inflict the exhorbitant penalty of forfeiture upon the city, of the property. To sum up the case, therefore, it has been shown that the relief asked for is such as a court of equity never grants, that is to enforce forfeiture. The complainant, if he thinks a forfeiture has occurred, has a plain remedy by action of ejectment to recover the property. 2d. There has been no forfeiture, on the plainest rules of construction. The only interruption was by the joint act of Marshall and the city, and it is to be observed that the complainant does not himself treat this as a breach of covenant occasioning forfeiture, but insists that it entitles him to compensation in time, in equity. There are other acts complained of; that the city reduced the wharfage on packets below the rates prescribed; levied taxes on flatboats and collected the same without Marshall's consent, and for the benefit of the city, and thereby received a large sum, which of right belongs to complainant; established another landing in violation of the contract; refused aid in collecting wharfage, and harassed the complainants' tenants by law

suits. It is to be observed that so far as these alleged violations of the contract are concerned, it is not expressed in the deed that forfeiture shall be the penalty. The complainant had and has, a plain, adequate, and complete remedy at law for damages. Being stated separately, they evidently are not comprehended in the covenant against the acts of the city defeating the complainant's right to collect wharfage, and are obviously independent of it. By themselves they constitute no foundation for a bill in equity. The city is a thriving, commercial city, perfectly solvent, and can be compelled to pay by ordinary proceedings at law, any judgment which the complainant may obtain. Marshall has slumbered on his rights if he has any. The supposition would be that the acts complained of did not seriously affect his income, if they were committed. When we come to scrutinize the charges, however, they, as well as those which are relied on as working forfeiture, vanish into thin air. Indeed, the bill appears to be a fiction and an experiment throughout. The wharfage rates on steamboats was fixed by an ordinance passed contemporaneously with the deed, and does not violate the contract, for, by the terms of the lease to Porterfield, which was to be the standard, a *maximum* rate was established only, thus admitting of a reduction. This seems to have been understood by the parties at the time; for how can it be possible that at the very time the deed was executed, and the first step in carrying out its provisions there should have been the flagrant violation of its terms, which Marshall pretends; and that Marshall should offer no resistance during the whole ten years. The lease of Porterfield and the city ordinance are referred to by the bill, and are parts of it. The deed reserves the right to the city to tax boats for certain purposes. The tax complained of, when the ordinance is examined, was a hospital tax, levied on boats remaining a certain time at the wharf to sell goods. Marshall's wharfage rates were not

disturbed. The establishment of another landing, outside of the prescribed limits, is vaguely charged, and amounts to nothing. He says, at the filing of the bill, and for eighteen months previous, two flatboats had been lying at this new landing. When it was established, whether during the ten years or not, does not appear. It is manifest that it did not interfere with the wharfage receipts of the regular landing, which are stated to be thirty or forty thousand dollars per annum. The bill does not state that Marshall was in anywise affected by this landing, except he conjectures that it may affect the value of real estate near the proper landing. Marshall, by the *terms* of the agreement, could have instituted suit at any time in the name of the city for his use to collect wharfage, but these charges are evidently thrown in as make-weights merely, and deserve no further notice.

The deed being valid, and no forfeiture having occurred, and the remedy for such forfeiture being purely legal, if such forfeiture had occurred, the bill cannot rest on these grounds; and it is equally clear that relief, in the shape of pecuniary compensation, cannot be granted. To ask such relief is to admit that the grounds on which the relief specifically prayed for rests, do not exist. It is an admission that the deed is valid, and no forfeiture has occurred. There are two substantial reasons why pecuniary compensation of no kind can be granted. 1st. Whatever right to such compensation Marshall may have, arises from the contract or not at all; and on this contract he has a legal remedy, and a court of equity has no jurisdiction. (18 Vesey, 118; Platt on Covenants, 87, 139.) 2d. The complainant could not have maintained his bill, even if he had framed it, in the alternative, with a double aspect to recover the land, on the grounds that the title was invalid or had been forfeited, or to recover pecuniary compensation for alleged injuries, because, according to well established principles, grounds so inconsistent, and relief so incon-

sistent, could not be associated together; and clearly under the prayer for general relief, no compensation for loss by inevitable accident, or compensation for injuries, could be obtained; for the defendant would be taken by surprise, the whole scope of the bill being to recover the property and income since May, 1862. The complainant groups all his grievances together, and avers that by these acts, the city has lost its title, and prays for a restoration of the property. Where a bill was filed to recover an annuity charged upon lands under the prayer for general relief, or such other relief as the court should see fit to grant, it was held that the party could not, under such prayer, or by amending his bill so as to present the two aspects, recover the lands, although he might have title, and of course the converse of the proposition would be true.

Story, Equity Pleading, 47. A more striking illustration is to be found in 2d Page's Reports, Colton *vs.* Ross, p. 396. The complainant filed his bill to set aside a will on the ground of fraud, (he was a legatee and heir,) and had a prayer in the alternative, that in case the will was not set aside the executor should account and pay over the legacies.

The court held that the grounds were totally inconsistent and could not stand together, yet the right of a legatee to come into a court of equity to have an account against the executor as a trustee, was as clear under the New York system as under the English system.

In concluding this branch of the case, we deem it not out of place to present an analysis of the bill. The object of a bill is determined by the prayer. The prayer of this bill is for specific relief, to wit: The rescision or cancellation of the deed or contract, and restoration of the property conveyed, and as an incident to this relief, the issues and profits received by the city from the property. If the principal grounds fail—if the specific relief is refused—the incident must fall with it.

It will be observed that the *specific relief* is the object aimed at by the bill, throughout, for all the various charges are relied on as making up the main charge, to wit, that the city had interrupted the complainant's right to collect wharfages. The first charge is that the city, by an ordinance, reduced the wharfage on packets. It is plain that this act by itself is not the foundation of relief in equity. If a violation of a covenant it sounds in damages, and no reason is shown why the legal remedy is not adequate. The bill characterizes the act as one which took from the plaintiff *his right*, &c. The landing fee is the next charge. This will be reserved for separate consideration. The quarantine regulations and the civil war are put on the same footing, and both presented in his bill as interruptions occasioning forfeiture, because the time these conditions prevailed should be added to the ten years, and the defendants refuse to extend his time, and by this refusal deprive him of his right. The vague allegation about taking possession before the term expired is of like character. (See bill, p. 8, 9.) So of the charges as to harassing him with suits. After the recital of his grievances, the complainants wind up, on page 9, with the allegation that he is advised that by reason of the said several acts the title of the city has become forfeited, and he prays restoration. P. 10.

The "landing fee" was evidently designed to occupy no higher ground; that is to say, it was not designed to constitute a distinct ground of relief. Having made an estimate of the loss under the operation of the ordinance relating to packets, the pleader simply meant, in saying he had no means of knowing the amount received by the city as a "landing fee," to excuse himself for not stating specific loss. It is hardly to be supposed that the accounts of the receipts and disbursements of the revenue of a city government, under public ordinances, were accessible to the city council, but not to the citizen.

But even on the hypothesis that the complainant designed to make this particular charge, the foundation for independent relief on the ground of discovery and account, which is improbable, the charge does not justify the relief under the prayer for general relief. There are no allegations showing any obstacle to the legal remedy, and the complainant does not state that the present city council knew what sums had been paid in under their predecessors, or that they had possession of the archives, which exhibited the receipts, and refused him permission to inspect them. In addition to all this, the ordinance was plainly a mere tax on the privilege of selling goods; a tax on merchandize, put in the form of a specific sum, for convenience.

Now, it is clear that if the specific relief, rescision, and restoration for forfeiture is denied, the various charges made in the bill as evidence of a breach of covenant involving forfeiture, are not of themselves grounds for other relief in the shape of money.

The amendment of the prayer does not alter the facts charged. The object of that amendment was to get pecuniary compensation, to be estimated in issues and profits, for equivalent periods.

The amended prayer (p. 27) was made the ground in the court below of the extraordinary claim for compensation for loss occasioned by inevitable accident, treating the yellow fever and quarantine, and especially the consequences flowing from the late civil war, as such accidents.

There is perhaps no branch of equity jurisdiction which requires more careful discrimination than this. The court of chancery is not an insurance office, and never presumes to shift misfortune from one man's shoulders to others. Where there is equal equity, and both parties are innocent, the rule is, that as the tree falls so it must lie.

The principle to be gathered from the books and decisions seems to be this, that if by inevitable accident a party gets what was intended for another, or reaps a profit

which substantially he ought not to have, and which but for the accident, and according to the original design, would have enured to another, the court will interpose and apportion or compensate for the loss; but it will be found that all the leading cases have one distinguishing feature, and that is that the defendant has by the accident obtained an advantage, which in equity and good conscience he ought not to retain, and which but for the accident would, according to the original design, have gone to another.

We take the case of Hatchet *vs.* Pattle, 6 Maddox, a leading case. A party intending to provide for certain objects of his bounty, purchased certain public stocks of the French government called *rentes viagere*, and settled them upon one for life, and then to such persons in remainder as the donor should, by his will, appoint. It was provided in the deed of settlement that the arrears and growing payments at the death of the life tenant, should go to the remainder man. The revolution broke out in France, and no *rentes* were paid to the life tenant, who died before the revolution ended. In consequence of the treaty of 1815, the arrears of *rentes* were paid. In a contest between the representatives of the life tenant and the remainder man, the court held that the rentes accruing and suspended during the life of the tenant for life, should be apportioned between the representatives of the tenant for life and the remainder man.

Here it is manifest that the whole object of the donor in bestowing his bounty was thwarted, and the life tenant intended to be provided for was left without a cent, while the remainder man, by the inevitable accident, was about to get what the donor never designed to give him.

Here was an accumulation of money which, according to the design, was to go to the support of the life tenant. The accident suspending the payment, the life tenant got nothing, while the remainder man got what in equity be-

longed to the life tenant. The remainder man got more than he was entitled to, and the life tenant got nothing. The remainder man profited, therefore, by the misfortune.

The case often cited by text writers, of compelling a lagatee to refund, because of a deficiency, of assets, when he has been paid in full, leaving others unpaid, serves to illustrate the doctrine still more clearly.

It is given as illustration by Story, (Redfield, §92, p. 91,) where a legatee has been paid in full, and it turns out that there was an original deficiency of assets, he may be compelled to refund on the ground of accident or mistake, but if there was no original deficiency, and the actual deficiency was occasioned by waste of the executor, he shall not be required to refund. The reason given for this distinction is that in the first case the legatee got more than his share, according to the intention of the testator, in the last he obtained only what he was entitled to.

The case of the apprentice, cited by Story, is exceptional, but it has the same distinguishing feature. The main great object was the training of the apprentice. This was the equivalent for the money paid. The death of the apprentice relieved the master of his duty, and he got the whole amount of money to be paid for this training for nothing.

The case of Quick *vs.* Stuyvesant, 2d Paige, 84, where owners of adjoining lands, contiguous to the city of New York, united in a scheme to divide the whole into lots and streets, and as part of this scheme, and with a view to adjust their rights with reference to the anticipated arrangement, streets were dedicated and conveyances made by one to the other. The legislature of New York passed a law prohibiting the laying off of streets, and frustrated the whole scheme. The court of chancery interposed to place the parties in *statu quo*, because accident had frustrated a scheme which was the sole foundation of the conveyances. Neither party could, without gross injustice,

claim advantages which were not compensated for by any equivalent. Indeed, this was a case in which a party attempted to enforce part of a scheme which accident had frustrated. The very basis of the conveyances had been swept away.

The case of Dories *vs.* Nattier, 1 Sim. & Stu., 463, (English,) is another case cited by text writers.

It will be perceived in all these cases, that one party has obtained something which he cannot conscientiously retain. He has either obtained more than he was entitled to, something intended for another, or has in some way profited by another's loss.

The case we are considering has none of these features. The city of Vicksburg engaged to give up all the income of the property which *might accrue* in ten years, no more, no less. There was no accumulated fund which she obtained by accident, no shortening of the period. She got nothing that was not intended for her by the contract.

Marshall did not realize, perhaps, as much as he expected, owing to influences which affected trade; but as we are instructed by Story, §101, p. 97. There is no ground for relief, in the fact that by accident a party has not realized the full benefit of his contract.

The city, in limiting her covenant to the securing to Marshall, all the rents and wharfage which would *accrue* in ten years, came under no obligations to make up losses from mere diminution of profit from any sources. She suffered in all her material interests by the same accident. The shrunken veins of her perishing commerce ceased to nourish her business and to stimulate her enterprise. Marshall had certain interests in the commerce of the city, and so did every other man of business or property in the city. On what ground can he claim to be exempt from the common misfortune?

If the parties had intended that a certain sum of money should be realized by Marhall from the income of the

property, the deed would have provided that he should continue to receive the income until that sum was realized. The fact that they did not engage that he should receive a specific sum, is conclusive that the intention was that Marshall should take all risks of *accidents* affecting that income. The yellow fever was a constantly recurring calamity, affecting all interests so of the freezing of the upper Mississippi and the Ohio; so of the low stage of water in September and October. The railroads were beginning to divide transportation with the river. All these influences must have been present to the minds of the contracting parties, and yet the city did not bind herself to make up the loss by diminished receipts. There is one great danger to Vicksburg, which has been present to the minds of every property holder there for the last twenty years, and is still impending, and that is the tendency of the river to cut its way through the neck of land on which General Grant's army was posted in 1863. Suppose the river had cut its way through this neck of land during the ten years, so as to leave the city of Vicksburg on a channel navigable only in high water, could Marshall expect relief for diminished profits in a court of chancery?

The court of chancery has often been appealed to by tenants, to be released from paying rents on premisis consumed by fire and has invariably refused. So in the State of Mississippi, the hirer of a slave who dies during the year, is bound, nevertheless, to pay the year's hire.

There is no difficulty in dealing with casualties which the experience or observation of mankind teaches us to expect as probable, as death and fire, &c. War and pestilence may be regarded as among the unexpected events, (though, according to strict truth, one or both prevails continually,) but it is not because the accident is not anticipated, that courts of equity interpose, but on the ground that the accident has occasioned a loss on one side and an advantage

on the other, which disconcerts and disappoints the purpose of the parties to that extent, that we at once perceive that it is inequitable for the more fortunate party to take advantage of it.

This ground being swept away, we do not see how the amended prayer strengthens the case; and taking the original and amended bill together, we have a case in which it matters not whether the allegations turn out on the evidence to be true or false, no relief could be granted.

If we turn to the proof, we find that the complainant failed to prove that the city took possession of his income before the expiration of the ten years. He had abandoned the city. The city continued to control the landing, but did not receive his wharfage and rents. (See Marshall's deposition, p. 70.) "I regarded it (the wharf) as abandoned, and looked to the city to make up the loss." (See Auter deposition, 115; Lindsey, 125; Bender, 130; Smedes, 132.) It is proved that he actually recommended the reduction of the wharfage on Packets, Bryson, 120; Arthur, 139.

He advocated the quarantine, and went heart and soul into the civil war. (Donophan, 152.) The ordinance imposing what is termed a landing fee, was passed under the reservation in the deed. P. 12, (at the bottom,) ordinance, p. 89; Arthur deposition, 140; Donophan, 151.

The argument of Mr. Smeds, which Mr. Marshall has ingeniously thrust into the case, is but a clever piece of argumentation. The city was not bound to adhere to any particular form of taxation, provided she merely designed to tax the sale of merchandize. To put it in the form of a license to land and sell for two days, was a covenient mode of levying the tax. The power to tax the amount of sales of merchandize might be properly exercised by a license fee for selling. The landing fee was nothing more. The title of the ordinance indicates that the landing fee was a tax on trading boats, as such, and a tax for the privilege of trading.

The deposition of Marshall cannot have more weight than his sworn bill. One thing is conspicuous in it, and that is that Marshall purchased the interest of claimants in the hope that he would be enabled to drive a good bargain with the city, and the moment he consummates his title, he makes a proposition to sell out. (Pp. 73, 74.)

The plain truth is, that Marshall attempted by popular appeals to force the elective council to accept his terms. He exhibits himself in the light of a noisy, litigous man, with ingenuity enough to keep up a show of persecution. The subtlest art of the demagogue consists in this simulated persecution, and drawing a distinction between the virtuous people and their rascally representatives.

Marshall has made his deposition the vehicle of conveying to the court some specimens of fine writing; but if we mistake not, the exhibition serves to prove him a man under the dominion of two very strong desires—the desire for money and the desire for notoriety.

The bill is in the same exaggerated style of his "card." The charge that the city forced him to make the deed is shown to be untrue. And it appears that his grievance was that he failed to force the city into the terms he wanted.

The whole case of the complainant is manufactured by himself, and the only evidence of the monstrous wrongs detailed in the bill, is to be found in the bill itself and the "cards." There does not appear to have been from first to last but one plausible ground for complaint, and that grew out of the license to trading boats. If the city erred in this, the error was rather a matter of form than of substance. The reservation of the right to tax merchandize, clearly had reference in the deed to trading boats, and whether the tax on these was in the form of a tax on sales, or an *ad valorem* tax, or specific license tax, it was plainly comprehended in the reservation. Mr. Smedes makes an ingenious play upon words. A sum paid in lieu of an *ad valorem* tax on goods, or on sales of goods, is not a tax

on the goods or sales, but the power to tax the goods or the sales implies the power to commute this tax by a specific sum for the privilege of selling. It is a tax on trade in goods, and the form is immaterial.

CARLISLE & McPHERSON,
Of Counsel.

Phalley
1 Howard Miss
16 Pelers 276
6 Wegey. 650

John Davis.

In the Supreme Court of the United States.

DECEMBER TERM, 1872.

CHARLES K. MARSHALL, Appellant,
vs.
THE MAYOR AND COUNCIL OF THE CITY OF VICKSBURG.
} No. 11.

BRIEF FOR APPELLEE.

The Bill.

In the year 1851, Marshall having bought up "the whole wharf and landing, in front of the town [of Vicksburg] from the original northern to the original southern boundary thereof," (record, p. 2, fol. 7,) in October of that year, entered into a contract (record, p. 10,) with the city whereby—

1. He conveyed that property to the city.

2. The city conveyed to him certain other property.

3. The city covenants that Marshall shall receive all rents and wharfages for ten years. The wharfages to be collected by an agent nominated by Marshall, and appointed by the city, which agent shall be paid by Marshall and account directly to him, and the city not to be liable for his defaults. The city was to pass an ordinance imposing a fine of ten dollars on each landing of any boat that refused to pay regular rates. Marshall was, during the ten years, to make any contracts he pleased for rent of property on shore.

4. If the right to collect wharfage and rents should be suspended by the interposition of third parties, then the

time so lost should be added on to the term of ten years.

5. If the city directly or indirectly should *interrupt or defeat permanently* the right to collect rent and wharfage, all the property conveyed by Marshall should revert to him as fully as if the deed had never been executed.

6. Marshall having leased to one Porterfield the right to establish a wharf-boat at a certain point and agreed to put the landing in order, the city assumes this burden and agrees to make the repairs.

7. The city withdraws from a suit concerning this property, in which the city had petitioned to be made a party in order to assert its right to the property.

8. The city is to keep a certain landing after the expiration of the term, unless, &c.

The bill avers that Marshall had incurred large debts in order to purchase this property, secured on this and other property; that the intervention of the city in the said suit rendered his creditors uneasy and clamorous, and they threatened to sell his property—and he therefore was compelled to make this arrangement with the city—that it was without consideration and "void and not binding upon him in law and in equity." (Rec., p. 5-) The bill further avers that the city violated its covenants in this:

a. That whereas it was stipulated that the rates of wharfage on steamboats should not be less than stipulated in Porterfield's lease which he says was for regular packets, $5 per trip, the city by ordinance made the rate only $5 per week, and as some steamers made several trips per week this was a loss to the claimant.

b. That the city, for the use of the city, levied a fee of $1 on each flatboat, keelboat and other water craft, and refused to allow the complainant to receive that tax.

The bill does not state that this fee was the whole wharfage; and to the contrary, it appears in the evidence cited in the appellant's brief (record, p. 90,) that the ordinances on the subject were to this effect, viz:

A wharfage for the benefit of complainant, $2.00.

A fee, called a landing fee, for the privilege of selling goods for two days, this fee being collected for the city, $1.00

A tax on value of cargo after two days, for the city.

The bill further avers that the city authorities in 1853, 1854, 1855 and 1858, established a quarantine during the prevalence of yellow fever, by which quarantine the arrival of boats at the city was prevented. He admits that he did not object to the establishment of the quarantine, and as a conscientious and humane man could not do so.

The bill further avers, that a civil war commenced about the 14th of April, 1861, and by reason of a blockade established at Cairo and below, nine-tenths of the boats previously navigating the river could not reach Vicksburg; that the boats in the service of the Confederate government refused to pay wharfage, and so he received very little wharfage after April, 1861.

The bill then states, that the city took possession of the property in February, 1862, and has since recceived the rents and wharfage, whereas, allowing for the time lost by quarantine and war, he should have been allowed about two years more, and this he says should have been allowed to him after the close of the war. He avers too, that the city has vexed and annoyed him and his tenants in various ways.

He states his efforts to obtain a settlement, and these failing, he makes his "appeal to the courts of the country for an absolute and unconditional surrender of his large and valuable rights as aforesaid." (Record, p. 8, fol. 26.)

He claims that the mayor and city council, by their acts above mentioned, "have, according to the letter, spirit, &c. of said contract and agreement, forfeited whatever right or title they had to said property or any part thereof, and the same or every part of it is now, by the very terms of the contract, vested in him, and he is as fully and absolutely entitled to it as if said contract had never been executed." (Record, p. 9, fol. 29-30.)

The prayers are:

1. That the city account for all rents and wharfage received.
2. That the contract be rescinded, vacated and annulled, and the property restored to him.
3. That the city pay him the amount to be found due on the account.
4. That defendants be enjoined.
5. That a receiver be appointed.
6. If mistaken in his rights, then for other relief.

A demurrer was interposed and sustained as to so much of the bill as sought a restoration of the property. The bill was retained as to so much as sets up a title to compensation for breach of covenant.

Thereupon the complainant amended, specifically claiming that his term be extended so as to make up for time lost by quarantine and war, the extended term to commence after the close of the war, and the city either to account for the sums received during such term, or the property be put in his possession for such a term.

There was an answer and replication, proofs were taken, cause heard, and without reference to a master, a decree for a money payment was made.

The errors assigned are:

1. The overruling of the demurrer.
2. The decree without a reference.
3. The inadequacy of the amount received.
4. The refusal of the relief prayed in the amendment.

Points.

I.

By submitting to the demurrer and amending, the complainant waived the error, if any, in sustaining the demurrer, and in fact made his bill a new bill for a different purpose. When the demurrer is sustained to the whole or part of a bill, the whole bill or that part of the bill is

"out of court." Dan Ch. Pr. 668, 671. If not, his bill bill now makes four totally different and incompatible issues: 1st. The absolute invalidity of the agreement 2d. The forfeiture of the rights of the defendant under the agreement, leaving the complainant in possession of all he obtained by it. 3d. Damages for breach of those covenants. 4th. A claim for an extension of the term granted him by the contract.

II.

The demurrer to the original invalidity of the deed was properly sustained.

A. There is no averment that the deed was obtained by the city from the complainant. It may have been voluntarily offered by him as the best mode of meeting the difficulty in which he had involved himself.

B. The bill avers no deceit, fraud, concealment, oppression, or wrongful act of the city authorities or of any one.

C. The bill itself shows to the contrary of the averments therein made, that there was consideration given for the conveyance, in his obtaining legislation by the city to fix and sanction the rates of wharfage, to impose a penalty for non-payment, to sue in the name of the city, and certain work to be done by the city.

III.

As to the demurrer to the forfeiture.

A. The court had no jurisdiction to decree a forfeiture for breach of covenants.

B. The breach of covenants set up in the bill were not grounds of forfeiture; such breach merely gave ground for an action for damages.

IV.

The prayer for discovery and account gave no jurisdiction to the court.

The ground of discovery and account was simply the

forfeiture or the original invalidity of the contract. The whole purpose of the bill was to recover the property, and as incidental thereto, to recover the rents and wharfages received by the city. Under the agreement the complainant had no right to an account. All the collections were to be made by agents nominated by Marshall and using the authority of the city to make collections, but account. able to him only.

V.

The claim being reduced by the amendment solely to an allowance of the time lost by quarantine and the war, he was not entitled to such extension.

A. First, as to quarantine.

What was the act complained of? The quarantine ordinance of 1855 is found on page 30 of the record. It requires all boats bound to the city to stop at the quarantine station for ten hours to be examined, and then to proceed to the city with their healthy passengers and cargoes, and transact their usual business.

In 1853 (record, p. 31,) the boats were to pay wharfage at the quarantine station, and the wharf boat was moored to that place.

The complainant admits that he did not, and as a good citizen and conscientious man could not, object to the quarantine. In fact, he petitioned for it and advised it. His deposition, rec., p. 69.

It is submitted that in no way did the establishment of the quarantine suspend his right to collect wharfages; it prevented some boats from reaching the city. And he says his consent was asked to the removal of the wharf-boat to the quarantine ground, that the contract might not be violated, but none that arrived were thereby excused or prevented from paying wharfage.

Certainly it never could have been contemplated that he city should contract to abnegate its police power to

protect the health of the city, by forbidding the approach of pestilence.

The stipulation is simply a waranty of the *right* to collect rents and stipulates against any lawful acts of these parties.

B. As to the war.

It is submitted that by no reasonable construction of the contract can the city be held to stipulate against the acts of the United States, either in their sovereign or belligerent capacity, or against a blockade of the river established hundreds of miles away.

In fact, it seems by the exhibits accompanying the bill (Porterfield's lease) that there was a certain right claimed against the complainant by one Lum, (record, p. 16, fol. 30,) and very possibly there may have been other difficulties anticipated in the way of the claimant, either in his own right or that of the city, collecting the rents and wharfages. It was against such interruption that the stipulation was directed.

If these views be correct, as we submit they are, the claimant under his amended bill had no right to any extension of time, and as that was the sole ground of relief of his amended bill, he was not entitled to any account, and has not been damaged by the decree complained of by him, and the same will not be reversed on his motion. Kelsey *vs.* Hobbey, 16 Peters, 276. There being no cross appeal, we are not in a position to ask the reversal.

Conclusion.

We submit the decree must be affirmed.

CARLISLE & McPHERSON,

Of Counsel.